

775. Also, petition of W. G. Lee, president of the Brotherhood of Railroad Trainmen, Cleveland, Ohio, favoring the Anderson amendment to the Esch railroad bill; to the Committee on Interstate and Foreign Commerce.

776. Also, petition of Oriole Lodge, No. 214, Brotherhood of Locomotive Firemen and Enginemen, Baltimore, Md., opposing the Cummins railroad bill; to the Committee on Interstate and Foreign Commerce.

777. By Mr. MacGREGOR: Petition of National Industrial Conference Board, favoring the Cummins railroad bill; to the Committee on Interstate and Foreign Commerce.

778. By Mr. O'CONNELL: Petition of Chamber of Commerce of the State of New York, protesting against the continuance of discriminatory tariffs from so-called central freight territory to Gulf and South Atlantic ports; to the Committee on Interstate and Foreign Commerce.

779. Also, petition of American Federation of Railroad Workers, protesting against the passage of the Cummins-Esch bill; to the Committee on Interstate and Foreign Commerce.

780. Also, petition of Abraham Lincoln Branch, Friends of Irish Freedom, protesting against loans to foreign nations; to the Committee on Ways and Means.

781. By Mr. SINCLAIR: Petition of a committee composed of delegates appointed by the Legislatures of Minnesota, North Dakota, and South Dakota, members of the Flood Control Commission of North Dakota, president of the Tri-State Flood Control Association, and president of the North Dakota Flood Control Association, asking aid in the matter of flood control in the Red River Valley of the North; to the Committee on Flood Control.

782. Also, petition of Prairie View Grange, No. 24, Beulah, N. Dak., protesting against the action of the National Grange in opposing the Plumb plan of railroad operation, and declaring for the Plumb plan as the only plan under which railroad rates will not be increased; to the Committee on Interstate and Foreign Commerce.

783. By Mr. VARE: Petition of Joseph Plunkett Branch, Friends of Irish Freedom, asking for recognition of Ireland; to the Committee on Foreign Affairs.

784. By Mr. WOOD of Indiana: Petition of residents of Lafayette, Tippecanoe County, Ind., urging the enactment of a law to retire the civil-service employees of the United States Government; to the Committee on Reform in the Civil Service.

SENATE.

SATURDAY, January 10, 1920.

The Chaplain, Rev. Forrest J. Prettyman, D. D., offered the following prayer:

Almighty God, give us Thy gracious favor for the task of this day. We can not shut our eyes to the vast responsibilities of this hour, to the far-reaching influence of every word that we utter and every plan and purpose that we have. Give us a divine inspiration that we may make the moral distinctions, that we may measure the moral forces, that we may understand the movement of God in this our day; and give us faith to put ourselves at Thy command. For Christ's sake. Amen.

On request of Mr. CURTIS, and by unanimous consent, the reading of the Journal of yesterday's proceedings was dispensed with and the Journal was approved.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. Call the roll.

The roll was called, and the following Senators answered to their names:

Ball	Gronna	McKellar	Robinson
Beckham	Hale	McNary	Sheppard
Borah	Harris	Moses	Smith, Ga.
Brandegee	Harrison	Myers	Smith, Md.
Capper	Johnson, S. Dak.	New	Smoot
Chamberlain	Jones, N. Mex.	Overman	Spencer
Curtis	Kenyon	Page	Sterling
Dillingham	Keyes	Phipps	Trammell
Elkins	Kirby	Pittman	Williams
Fernald	McCumber	Pomerene	

Mr. GRONNA. I wish to announce that the Senator from Wisconsin [Mr. LA FOLLETTE] is absent from the Senate, due to illness.

Mr. TRAMMELL. I desire to announce the unavoidable absence of my colleague [Mr. FLETCHER], being confined to his home by illness.

Mr. McKELLAR. I wish to announce that my colleague [Mr. SHIELDS] is detained from the Senate by illness in his family.

I wish also to announce that the junior Senator from Louisiana [Mr. GAY], the Senator from Delaware [Mr. WOLCOTT], the Senator from North Carolina [Mr. SIMMONS], the Senator from Virginia [Mr. SWANSON], and the Senator from Alabama [Mr. BANKHEAD] are absent on official business.

The VICE PRESIDENT. Thirty-nine Senators have answered to the roll call. There is not a quorum present. Call the roll of absentees.

The reading clerk called the names of the absent Senators, and Mr. COLT, Mr. FRANCE, Mr. FRELINGHUYSEN, Mr. NELSON, Mr. POINDEXTER, Mr. SUTHERLAND, Mr. THOMAS, Mr. WADSWORTH, Mr. WALSH of Massachusetts, and Mr. WATSON answered to their names when called.

Mr. NEWBERRY, Mr. RANDELL, Mr. LODGE, Mr. KING, Mr. NUGENT, Mr. KENDRICK, Mr. DIAL, Mr. SMITH of South Carolina, Mr. LENROOT, Mr. NORRIS, Mr. WALSH of Montana, Mr. HENDERSON, Mr. CULBERSON, Mr. McLEAN, Mr. HITCHCOCK, and Mr. JOHNSON of California entered the Chamber and answered to their names.

The VICE PRESIDENT. Sixty-five Senators have answered to the roll call. There is a quorum present.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House had passed the bill (S. 1726) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H. R. 9281. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors;

H. R. 10515. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors;

H. R. 11310. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war; and

H. R. 11554. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice President:

H. R. 5818. An act for the retirement of public-school teachers in the District of Columbia;

H. R. 8084. An act granting to certain claimants the preferential right to purchase certain alleged public lands in the State of Arkansas, and for other purposes;

H. R. 8661. An act to authorize the Kingsdale Lumber Corporation to construct a bridge across Lumber River, near the town of Lumberton, N. C.;

H. R. 9947. An act to authorize J. L. Anderson and H. M. Duvall to construct a bridge across Great Pee Dee River at or near the town of Cheraw, S. C.;

H. R. 10135. An act for the construction of a bridge across Rock River at or near East Grand Avenue, in the city of Beloit, Wis.;

H. R. 10558. An act granting the consent of Congress to the Connecticut River Railroad Co., its lessees, successors, and assigns, to construct a bridge across the Connecticut River in the Commonwealth of Massachusetts;

H. R. 10847. An act granting the consent of Congress to Marion County, State of Mississippi, to construct a bridge across the Pearl River, in Marion County, State of Mississippi; and

H. R. 11025. An act to authorize the construction, maintenance, and operation of a bridge across the Tombigbee River near Iron Wood Bluff, in Itawamba County, Miss.

PETITIONS AND MEMORIALS.

Mr. NELSON presented the memorial of Dr. C. H. Mayo, of Rochester, Minn., remonstrating against the adoption of the provision in the so-called Esch railroad bill relating to the issuance of passes to local surgeons along the line when needed for traveling, etc., which was referred to the Committee on Interstate Commerce.

Mr. NEWBERRY presented a memorial of S. M. Stevens Lodge, No. 150, Brotherhood of Locomotive Firemen and Engineers, of Marquette, Mich., remonstrating against the passage of the so-called Cummins railroad bill, which was ordered to lie on the table.

He also presented a resolution adopted at a meeting of the State Grange, Patrons of Husbandry, Michigan Federation of Gleaners, State Association of Farmers Clubs and Labor Organizations, held in Detroit, Mich., favoring a two-year extension of Government control of railroads, which was ordered to lie on the table.

Mr. PAGE presented a memorial of sundry citizens of Montpelier, Vt., remonstrating against the passage of the so-called Cummins railroad bill, which was ordered to lie on the table.

REPORTS OF COMMITTEES.

Mr. WADSWORTH, from the Committee on Military Affairs, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

A bill (S. 3683) to amend section 2 of the act entitled "An act for making further and more effectual provision for the national defense, and for other purposes" (Rept. No. 362); and

A bill (H. R. 10331) to amend an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1919," approved July 9, 1918 (Rept. No. 363).

Mr. CHAMBERLAIN, from the Committee on Military Affairs, to which was referred the bill (S. 547) authorizing the enlistment of non-English speaking citizens and aliens, reported it without amendment and submitted a report (No. 364) thereon.

Mr. MYERS, from the Committee on Public Lands, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 20) to provide for the payment for certain lands within the former Flathead Indian Reservation, in the State of Montana (Rept. No. 365); and

A bill (S. 2962) for the relief of Nick Sitch and Billie H. Evashanks (Rept. No. 366).

He also, from the same committee, to which was referred the bill (S. 604) for the relief of Delilah Siebenaler, reported it without amendment.

He also, from the same committee, to which was referred the bill (S. 795) to provide for the disposition of public lands withdrawn and improved under the provisions of the reclamation laws, and which are no longer needed in connection with said laws, reported it with amendments and submitted a report (No. 367) thereon.

He also, from the same committee, to which were referred the following bill and joint resolution, reported them each with an amendment and submitted reports thereon:

A bill (S. 3138) authorizing the Secretary of the Interior to sell and convey to the Great Northern Railway Co. certain lands for stockyards, and for other purposes, at Browning Station, in the State of Montana (Rept. No. 368); and

A joint resolution (S. J. Res. 30) to permit the disposition of certain lands in Montana ceded by the Crow Indians (Rept. No. 369).

Mr. KENYON, from the Committee on Education and Labor, to which was referred the bill (H. R. 4438) to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to civil employment, reported it with an amendment.

Mr. SPENCER, from the Committee on Military Affairs, to which was referred the bill (S. 3610) for the relief of William S. Britton, formerly second lieutenant of Infantry, who has been erroneously dropped from the rolls of the United States Army, reported it without amendment and submitted a report (No. 370) thereon.

BILLS AND JOINT RESOLUTION INTRODUCED.

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. JOHNSON of South Dakota:

A bill (S. 3693) granting a pension to Gertrude A. Robinson (with accompanying papers); to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 3694) granting an increase of pension to Helen D. Longstreet; to the Committee on Pensions.

By Mr. FRELINGHUYSEN:

A bill (S. 3695) for the relief of the Stevens Institute of Technology, of Hoboken, N. J.; to the Committee on Claims.

By Mr. OVERMAN:

A bill (S. 3696) to change the time for holding court in Laurinburg, eastern district of North Carolina (with accompanying paper); to the Committee on the Judiciary.

By Mr. SPENCER:

A joint resolution (S. J. Res. 143) requiring the several departments of the Government to pay for advertising their business matters; to the Committee on Military Affairs.

CLAIMS AGAINST THE SHIPPING BOARD.

Mr. McNARY submitted an amendment intended to be proposed by him to the bill (S. 3451) authorizing the United States Shipping Board to adjust the equitable claims of wooden-ship builders arising out of the prosecution of the war, which was referred to the Committee on Commerce and ordered to be printed.

ADDRESS BY DIRECTOR GENERAL HINES.

Mr. ROBINSON. Mr. President, I ask leave to have printed in the Record an editorial published in the New York Sun under date of Friday, January 9, 1920, making comment upon the address recently delivered by the Director General of Railroads.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

DIRECTOR GENERAL HINES FOR A FEW RAILROAD SYSTEMS WITH DIVISION OF EXCESS PROFITS.

"Director General Hines's clear and vigorous treatment of the railroad problem before the association of the bar is a matter of prime importance for more reasons than the fact that he is the present head of the Government-operated transportation system of the Nation. He is a highly developed, technical railroad man of many years of familiarity with financing, building, operating, and expanding carriers under private management. For more than a generation he fought the battles of the companies. In recent months he has had to fight the battles of the roads, their workers, and the public, not to mention the United States Treasury. And after it all, this bred-in-the-bone railroad man declares these explicit conclusions based upon his practical experience in all the capacities in which he has served:

"I believe that there must be fundamental changes which will consolidate the railroads into a few great systems. I believe that the public and labor, as well as capital, must be represented upon the management of these systems. I believe that a definite standard for rates must be established and that earnings clearly in excess of a reasonable return must be provided and must go largely to providing adequate reserves to take care of years of depression and at the same time enough of the excess must be left with the company earning it to provide adequate stimulus for efficiency. In my opinion, if any effort be made to return the railroads to private control without the fundamental reconstruction which I advise, the result will be progressively disappointing, and in a few years of dissatisfaction of the public will manifest itself through an insistent demand for a radically different plan which is not likely then to stop short of outright Government ownership.

"Mr. Hines is right in his view that American railroads can never give satisfactory service as a whole, can never become financially sound as a whole, can not keep up with the growth of the country, can not continue as private institutions except as a very few great systems naturally consolidated, closely coordinated, and centrally controlled. He is right because in this age big things—and the American railway system is incomparably big—can be done well only in big ways. The railroads which long were in advance of the growth of the country are not now keeping up with it and can not keep up with it as forty-eleven different fractions of a national transportation system at cross purposes and with conflicting policies. They can not get the best and most use out of carriers, out of trackage, out of terminals, out of traffic offices, out of overhead fixtures. They can not give the best and most service to the public which will determine the ultimate fate of the roads, big and little, good, bad, and indifferent.

"Mr. Hines is right in his view that because of their need of public confidence and support, because of their need of full cooperation by the workers, because of their submission to Government rate making and other regulation, there must be participation in the railway problems by not only the owners but the workers and the public.

"This does not mean that the public and the workers shall be partners in the sense that the term is now bandied about by strike leaders and political agitators—a partnership to share the profits but not the losses. It does mean that they shall get into the thing in a way to enable them to reach a common understanding of what must be done for the roads and what, while it is necessary for the roads, is equally necessary for the workers and for the public.

"Mr. Hines is right in his views that an immovable obstacle in the way of getting general rate increases adequate to the needs of the poor roads is the fact that some few roads are making and always do make high dividends and rich surpluses. Any rate that would put the destitute roads of a region on their feet would make the rich roads doubly and trebly rich. The

public always will be unwilling to approve and pay rate increases which pour forth showers of gold into the laps of those roads already opulent while merely rescuing the great majority of the roads from poverty row.

"Undoubtedly this proposal of Mr. Hines will be very unwelcome to some railroad men. It will be unwelcome to them, although Mr. Hines urges the necessity of giving roads enough of the excess earnings beyond a reasonable return to be a powerful stimulus to initiative, economy, and efficiency. Undoubtedly also his suggestion will be a shock to others who sincerely believe that if it is not legally unjust it is wrong in principle and immoral in practice to take from the road or the man what is honestly earned by diligence, competence, and merit to give to the road or the man that, for whatever reason, does not earn or can not earning a living.

"But it is a condition, not a theory, which confronts the railroads. It is a hard, cold fact of this condition that the Government is intrenched in the very center of the American railroad system, as the owners themselves are not and never were. It is a hard, cold fact that the Government determines how they may operate and how they may not, where they may go, and where they may not, what they may charge and what they may not. It is a hard, cold fact that the Government in its control of the roads, its exercise of the functions essential to their welfare, its authority to feed them or starve them, its power of life and death over them, is in effect the overshadowing senior partner, so to speak, of this vast national business institution.

"And it is a hard, cold fact of this condition that the roads, which are unwilling to give up any of their excess profits, will not get the rates to make those excess profits unless there is some such division. The common-sense question for them is not whether they ought to be able to keep what they get, but whether they ever will be permitted to get it unless some of the excess beyond a reasonable return is yielded by them. They never will get it else.

"Consider the alternative. Not many men will question the power and the right of the Government to tax out of the railroads for the purpose of public revenue their excess earnings beyond a reasonable return. The Government could lay a revenue tax that would take from all railroads every penny beyond such reasonable return. But this, in truth, would kill that incentive which Mr. Hines declares is necessary to efficiency. It would stimulate extravagance and waste. It would put a premium on failure instead of success. In the end, it would degrade every efficient, rich, and powerful road to the low level of the poorest and meanest.

"Director General Hines proposes a national railway program which broad-minded and prescient Americanism can back—a program to which all the railroads, no less than the country, sooner or later will be glad to come."

ARTICLE BY FRANK I. COBB (S. DOC. NO. 175).

Mr. BRANDEGEE. Mr. President, I ask to have printed as a public document an article by Frank I. Cobb, editorial writer of the New York World, which appears in the CONGRESSIONAL RECORD of January 5, 1920, pages 1025 to 1028.

The VICE PRESIDENT. Without objection, it is so ordered.

ADDRESS BY SENATOR UNDERWOOD.

Mr. BANKHEAD. Mr. President, I ask to have printed in the RECORD a speech delivered by my colleague [Mr. UNDERWOOD] before the chamber of commerce and the general public in Birmingham, Ala., Friday, January 2, 1920.

The VICE PRESIDENT. Without objection, it is so ordered.

The speech is as follows:

SPEECH OF HON. OSCAR W. UNDERWOOD BEFORE THE CHAMBER OF COMMERCE AND THE GENERAL PUBLIC, BIRMINGHAM, ALA., FRIDAY, JANUARY 2, 1920.

"Senator UNDERWOOD. Mr. President, ladies, and gentlemen, I wish to thank you for this splendid audience that greets me to-night. I am not here to deliver an oration. I am not here to please you with metaphor or honeyed words. I came here to talk to you to-night about a practical detail of legislation that confronts the whole American people.

"The Senate of the United States has passed a bill relating to the transportation system of America that, if it becomes a law, will mark a new era in the history of the American Republic in at least one respect. The era of war between capital and labor and the great transportation lines of this country will cease. The era of settlement by reason, by arbitration, by the law of social justice will have begun. There are many questions involved in the bill that the Senate has passed, and I am going to take the chance of wearying you by trying to explain the terms of this bill. It is a practical question, but it is a home question. It does not make any difference whether you are the man that sits at the lever, who moves the great transportation

system of America across the continent, or whether you are the woman that sits at home, nurses your baby by the home fire-side—this bill affects you both. This bill relates to the industrial life of the Nation. It relates to the happiness and peace of the home life of the Nation. America can not live without a transportation system. It is the artery that throws the blood from the heart of the Nation to each separate part of the national body, establishes life throughout the whole body politic, and you must look at this question from that standpoint.

LEGISLATION A PRACTICAL QUESTION.

"This bill is not in entire accord with my views, although I supported it in detail; but in passing let me say there are few great bills that have passed the Congress of the United States in the 24 years I have represented this immediate constituency that in all their details have met with my approval. Great legislative enactments are matters of compromise, and men who desire to be constructive in legislation must accept the best obtainable to accomplish the desired result and can not expect that every detail of legislation will meet with their approval.

"There are many problems embraced in the so-called Cummins bill that it is not necessary for me to go into to-night, and if I did attempt to discuss all its details we would not be through before the sun rises in the morning. There are many pages devoted to changes of organic law suggested by the Interstate Commerce Commission. There is incorporated within the pages of this bill the entire and absolute control of the issuance of railroad securities for the future, the regulation of the issuance of railroad securities so that in the future there shall be no more so-called watered stock; so that the money that is invested in the railroads and must earn interest in the future must be money that is actually invested for the benefit of the public.

"There has been practically no opposition to these features of the bill. Public sentiment has grown and drifted until almost by universal acclaim these features of the bill are recognized by the public as necessary in the public interest and have been accepted. It might be of interest to you to tell the details, but I am not going to detain you to-night by going into them, because I want to go to the battle line of the bill, the contested part of the bill, the questions where men differ, and give you my views for my support of the bill on these features.

THE NEWLANDS RESOLUTION.

"This proposal for solution of the railroad problem is nothing new. It is not worked out overnight. Nearly six years ago I was first nominated to go to the Senate. For nearly five years I have been a Member of the Senate, and my very first suggestion when I became a Member of the Senate was that a joint commission should be appointed to work out the railroad problem and see if we could not place it on a solvent and safe working basis in the interest of the public. It was known as the Newlands resolution. Senator Newlands was chairman of the Interstate Commerce Committee. I wrote the resolution and asked Senator Newlands to introduce it. It was passed by both Houses, and a joint commission to work out the railroad problem was appointed. I was a member of that commission. We had many hearings; we gave long consideration to financial, operating, and labor problems. But before we reached any conclusion or final determination of the question the Great War came on and the railroads came under governmental operation, and the work of our commission of necessity ceased. The men who were on that commission, though, set upon the Interstate Committees of the House and Senate and wrote this legislation that has now gone to conference. So they were educated on the subject before it was actually taken up.

"You will recall that a year ago the President of the United States notified the Congress that unless it desired to legislate before he returned the railroads to their owners, the war being over, he was prepared to return them on the 1st of March, 1919. It was impossible for Congress to write legislation by the 1st of March, 1919, and the members of the committees of the two Houses represented that fact to the President; and then he said that he would postpone action until the 1st of January, 1920, and when the first of this year came the bill was in constructive condition, so, by proclamation issued a day or two ago, the President has postponed the return of the railroads to their owners until the 1st day of March of this year. That proclamation can not be recalled. It was authorized under law and can be made but once, and whether we legislate or do not legislate the railroads will go back to their owners on the 1st day of the coming March, unless Congress fixes a prior date.

PROLONGED STUDY OF THE PROBLEM.

"A year ago the Interstate Commerce Committee of the Senate commenced its hearings on this bill. For months it heard the railway executives, the shipper, the business man, the representative of labor, all appearing before the committee, and for days

and weeks and months their various views were reflected into the committee. About the 1st day of September the Committee on Interstate Commerce of the Senate reported what is known as the Cummins bill, because Senator CUMMINS, of Iowa, is chairman of the committee, and introduced the bill. The bill was considered and debated by the Senate until the 20th day of December, when it was passed by the Senate and went to conference between the two Houses.

"Now, my purpose in giving this introduction is merely to show you that the 17 men who sat on this committee were thoroughly informed on this subject; that every angle in reference to this legislation had been brought to their attention. There are 17 men on the committee. On the day the bill was reported to the Senate two of them were absent, leaving 15 men present, and out of the 15 men, coming from the various States of the Union, the bill, in practically the form that it was passed by the Senate of the United States, was reported to the Senate by a vote of 14 to 1 from that committee, 14 members of the committee voting for the bill, Senator LA FOLLETTE, of Wisconsin, casting the dissenting vote.

"We do not contend that this is perfect legislation. The Congress of the United States never passed perfect legislation. Perfect legislation can only be evolved in time; but I think this legislation meets the equation.

LABOR, FINANCE, AND THE PUBLIC.

"There are two paramount sections in that bill. There are many of them, but I am going to confine my remarks to-night to two. One is section 6, that involves finance, and one is section 29, and the immediately following sections that involve labor. And when you say finance, and when you say labor, you have the whole railroad problem before you, except one other word, and that is the public—the man who pays the bill. Money, labor, and the public! There was a time in the history of the development of railroads when the main factors involved in the problem were the capital and the labor. The contentions were between capital and labor. But to-day the great American Republic has become the vital living force in this question that can not be overlooked in any just settlement of the problems involved.

"I am going to spend a few minutes, first, in outlining to you the financial side of the problem, and then I shall discuss at some greater length the labor problems involved. Section 6 of this bill relates to finance. Under the old system of Government regulation of railroads, you know in the beginning when Commodore Vanderbilt established one of the first great consolidated systems of railroads in the country, capital was the all-dominating factor. Capital could charge what it pleased for the transportation of freight, could order labor to do what it wanted to—could handle the whole situation without limitation. But since that day two great organizations have begun to function in the transportation system of the country. One is the Government and the other is organized labor.

"Four decades ago the Congress of the United States started to regulate the railroads, and in 1906 passed a bill that completed the direct control of the railroads, so far as freight rates were concerned. Organized labor commenced maybe five decades ago, certainly four decades ago; I can not remember the actual date. It was weak in the beginning, and grew and grew until it became a more powerful factor in the operating equation than the capital that owned the railroads.

THE RATE-MAKING PROBLEM.

"We are regulating railroads to-day in the interest of the shipper by regulating the freight rate for each piece of freight. Take this district. Pig iron is your great product. The cost of carrying a ton of pig iron from Birmingham to Boston is not fixed by the general manager down here at the railroad office. Of course, I am talking now as if the Government were not at present running the railroads, as if they were under private control. The rates are fixed by the Interstate Commerce Commission, and the toll that you have to pay to carry a ton of pig iron to Boston is \$5. It does not make any difference whether you go to the Louisville & Nashville station or the Southern station or the Seaboard Air Line station, you pay the same price for carrying a ton of pig iron to Boston. So it is with a carload of feathers or a package of silk or anything else, the Government fixes the rate. Now, let me ask you a question: Suppose you are on the strongest railroad in the South with your town and your business—a railroad that has dense traffic and high earnings and is able to supply you with all the cars you want and give you adequate service. Are you any more entitled to live and carry on your business from a public standpoint than the man who lives on a railroad necessary in the public interest, necessary to the development of the State, but enjoying a lighter traffic, and therefore to be denominated as a weak road? He is a citizen of Alabama or a citizen of the southern

country or of the Nation. He has developed a coal mine or a farm or a factory or a grocery store. He wants to live and do business. Because fate has thrown him in a territory of light traffic and you are in a territory of dense traffic, do you think you ought to have any exclusive right to adequate railway service with which to get your goods to the ultimate market of consumption and he not have a corresponding right? Of course, all that depends upon whether his railroad can live and function and do business; and that depends on whether it can finance itself. If it can not finance itself, the development of the South and of the Nation and the fate of existing communities is restricted to a few railroads enjoying unusual advantages.

"Now, the difficulty that confronted the Congress of the United States was this: Here is 'A' Railroad that started out in the beginning and wandered from one town to another. It was not built on a direct line, but it was built because one town wanted to connect with another, and it connected with another, and then they were joined together in one system. It went over mountains and hillsides; it went by circuitous routes; it built up the country. Then came along 'B' Railroad, after great commerce in the general territory was established, and built a direct line under modern engineering practice, avoiding the hills and building tunnels and making a short line. Now, bear this in mind: Eighty per cent of the revenue of all the railroads is derived from the long haul, the competitive haul, and only 20 per cent from local noncompetitive business. So that you see that a railroad, to live, must for its necessary return look to its competitive business—generally the long haul. It costs the 'A' Railroad much more to carry its freight to the final market of disposition, the railroad that was built under adverse conditions, than it does 'B' Railroad, that was built by modern methods and goes a direct line. Both are necessary in the public interest. Both must survive. And yet they must carry freight at the same rate, because if 'B' Railroad carries freight more cheaply than 'A' Railroad all of the through freight goes over 'B' Railroad, and 'A' Railroad will starve to death. So far as the loss of capital is concerned, that might not be so serious. You might say, 'Sacrifice the man who made a bad investment'; but, my friends, you sacrifice the man who made a bad investment in railroading only by sacrificing the railroad and business and happiness of the thousands and hundreds of thousands of people who live along that line. Their business must be made junk. Their opportunity to reach the ultimate market to dispose of their products will be destroyed if you destroy the road. And that was one of the problems that confronted Congress.

"There has been great pressure on the Interstate Commerce Commission in the last two or three decades for lower rates, or against any raise in rates, and if an active railroad with heavy traffic controlling heavy exchange traffic and heavy divisions of rates was making what seemed to be undue profits, the demand was that the rates on freight should come down or remain down, for higher rates would give it greater profits. Its condition was taken as the standard; it was held as the example, and when the rates came down or remained down on the strong road the weak road went into the hands of a receiver, the weak competitive road. Now, that is the great financial problem that has confronted Congress in all these months.

A NEW TEST.

"But we have proposed a new system. It has been criticized, because anything that is new is subjected to criticism, and properly so. You understand that the old basis of regulation of railroads was based on the effort to determine what was a just and reasonable charge for the transportation of a ton of pig iron from Birmingham to Boston, or a bale of feathers or cotton, or something else. What was reasonable and just? That means what was reasonable for the cost of transportation to the carrier and just to the public. But we found we could not leave it on that basis. There were some few roads that were successfully running and making money by reason of peculiar conditions. A large percentage of them were barely living and not giving adequate service to the public, and that is why you took them over for Federal operation during the war, at great expense. Conditions had choked off most of the roads in the country, and when the war came on there was no agency or relief that could put life into them and make them function and carry the soldiers, carry the raw material, and carry on the Nation's business during the war except the Government itself; and it has cost you hundreds of millions of dollars, because your legislation had choked off the majority of the roads before the war came on, and they were unable to meet the stress of war conditions.

"Now, the problem that confronts the Congress is to turn these roads back so that all roads necessary in the public interest can function and all serve the public, whether the public

lives on the lighter traffic road or the strong road. So we have changed the basis of rate making. The country is divided now into three rate-making districts, the western, southern, and northern. We have said that what is fair to the railroads in the way of return on its capital should be a just return on the fair value of its property. You understand I said property, not stock. So that we have provided that the basis of freight rates in each district shall be adjusted so as to produce a return of 5½ per cent on the fair value of the railway property in the rate district. In other words, if the value of the railroad property—the real value now, not the watered stock—if the real value of the railroads in the southern district is \$5,000,000,000—and that is approximately about right—the return that these railroads, not individually, but as a whole, in this southern district are to be entitled to earn is as nearly as practicable 5½ per cent on \$5,000,000,000; it would be something between \$200,000,000 and \$270,000,000—5½ per cent.

"Do you think that is unjust? You can buy an untaxed Government bond on the New York Stock Exchange to-day at a price that will yield 5 per cent. It sells enough below par to pay you 5 per cent, with valuable tax exemptions. Do you think you can make these railroads function unless you give that much—5 per cent—to investors in railway securities? Now, they do not get it if they do not earn it. Many of the roads will not earn it; they must work for it and earn it through efficiency if they get it; but on that basis of 5½ per cent the railroads will have a fair chance. Before the war, or the three years immediately preceding the war, the railroads had an average earning capacity of 5.22 per cent in the aggregate investment, and if this bill goes through they will in the aggregate have a right to earn—that is, their freight rates will be based on a yield of 5½, or 5.50, or an increase of twenty-eight one-hundredths of 1 per cent, or about \$50,400,000 for all of the railroads of the United States. Now, that is not an unreasonable increase when you consider the scale on which everything else has increased, and the increased interest which must be paid to attract investments. Now, that is net; you would pay a good deal more than that in freight rates. That is a net increase, not a gross increase. Of course, all increase in wage, all increase in coal, all increase in steel rails, in costs, goes into gross; but the railroads as a whole would get an increase of \$50,000,000 in net; and it will cost more than \$50,000,000 to make up to railway investors for the increased cost of money; or, you might say, for the depreciation of the value of money; and the increased value of everything else, for a ton of cotton or iron or merchandise will buy more transportation to-day than ever before in the history of the railroads.

"But we did not stop there. Some of these railroads will not earn 5½ per cent on the fair value of their property devoted to public use. Some of them will earn more. We said heretofore that a railroad could earn all it could make. We now put a limitation upon its excess earnings. We have said that a railroad's earning capacity could be 6 per cent on its value, with a graduated proportion of any excess. If it is undercapitalized and earns 6 per cent on the fair value of its property, it will be more than 6 per cent on its capital stock. If it is overcapitalized, it will be less than 6 per cent; and then when its earnings goes to 6 per cent on real value, we have said that it can earn one-half of the earnings between 6 and 7, or one-half of 1 per cent more; and when it goes above 7 per cent, it can only keep for itself one-fourth of what it earns over 6 per cent. The balance has to go into a Government fund, a Government fund in the interest of the public, a Government fund that can be loaned the railroads, weak or strong, that have to borrow money in order that they may compete with the great lenders of money in New York and hold down the price of interest, because you know you—the public—have got to pay that interest. You pay it. The railroad can not run unless you do pay it; and then the fund can be used to be invested by a Government board or commission in buying locomotives and cars, and equipment of all kinds and renting it to the weaker roads or the roads that need it whether they are weak or strong. That is in the interest of the public. One of the great problems that you have to contend with is lack of cars, lack of facilities to get your product to the market. Under this bill no longer could it be said that one great concern in America can hold all the ice cars, the refrigerator cars, because if they try to make a monopoly of it the Government would build some and furnish them where the public needed them, wherever congestion or scarcity might arise. That is in the interest of the people.

INCENTIVE NOT DESTROYED.

"Now, there is complaint that we are limiting the earning capacity of these roads. We have given them the incentive to go on. There is no competition in rates now. There is only

competition in service; but as this bill would allow them to earn one-half they earn between 6 and 7 per cent and one-quarter of 1 per cent above 7 per cent we would still hold out the inducement for competition in service. But as the Government under this bill would direct the Interstate Commerce Commission of the United States that it shall levy freight rates on the public that will enable the railroads to earn—not on their capital stock but on their real value—to the extent of 5½ per cent, that is practically assuring the aggregate railway investment out of your pocket, Mr. Shipper, whether represented by issues of stock, if issued at real value, or by their bonds, if issued at real value, a return every year; and if the Government fixes a reasonable return for them so that they can live and function, it is but just and right that the Government shall say how far they shall have the privilege of earning out of the business of the American people.

THE GREAT MUTUAL AND FIDUCIARY INSTITUTIONS.

"Now, I want to say this: Some people contend that section 6 is not a wise provision. You know that under the old system the railroads can't go on without breaking down, because they broke down before, and they are in worse condition now than they were before the war. If they had to go on now without any further legislation, you wouldn't have railroads; there would be no use talking about strikes. If they had to go on without this legislation, there wouldn't be any money to pay the man who sits in the cab of the engine. You have to have financial legislation if you are going to run these railroads.

"This legislation would put them on their feet financially. Why do I say that? The great owners of the railroads are not Judge Lovett, who is the head of the Harriman system, nor Mr. Smith, who is probably one of the ablest railroad men that has ever been in this country, the head of the Louisville & Nashville Railroad. They do not own the railroads. Most of the railway executives own mighty little stock in them. They run them. Who owns these railroads? The great holders of railroad securities in America are the insurance companies, the savings banks, and the great mutual institutions of America—universities and charities. My friend, if you have an insurance policy to-day to protect your wife and children in case of your death, on the average—I am speaking in averages—25 per cent of the assets that stand behind your insurance policy is railroad securities. So this is a problem that comes to you as well as the public, as the real owners of these securities.

"Now, why do I say that section 6 will enable these railroads to function and do business? It is not because I know, because I am not any more of a financier than you are; but if you have noticed the New York papers recently you will see a public statement signed by Mr. Kingsley, the head of the New York Life Insurance Co.; by Mr. Haley Fiske, president of the Metropolitan Life Insurance Co.; by Mr. John J. Pulley, head of the greatest mutual savings institution in the country; Mr. W. D. Van Dyke, of the Northwestern Mutual; Mr. Louis F. Butler, of the Travelers; and Mr. George K. Johnson, of the Penn Mutual, acting as a subcommittee of the heads of the great fiduciary institutions to lay their case before the public and the Senate.

"And with these men have joined others in similar positions of trust, enjoying the confidence of the Government and the public and representing the ownership of the great bulk of railroad securities, running into billions and billions of dollars, protecting the happiness of the children and the women and old age. These trustees are entitled to speak for their great trusts.

"Now, what did they say? They said that this Cummins bill ought to be passed, and they indorsed section 6. They are the men who have invested the money that you put in to protect your life insurance policy. They are the men that are selected by you in these mutual life insurance companies to represent your interest. They have put it in railroad securities which used to be the prime investments in this country, and they have said that if section 6 of this bill goes through it will fairly and reasonably protect you from disaster. It is not going to be a great return, but it will protect you from disaster, and they advocate it. Now, I have got confidence in these men. They represent institutions which own the securities. Those men are not gambling in securities. Their companies buy them for permanent investment. Those men are trustees for you. It is probable that they stand as trustees for nine out of ten men in this audience to-night in their insurance policies; and they say to me that if this bill goes through it will put these railroads on a fairly solvent basis. Do you not think that is a pretty good basis for me to cast your vote on? I think so; and I think that if this bill goes through it will not only put

your interest in that railroad security, represented by your insurance policies, on a solvent basis, but it is going to give you a railroad system in this country that can function and do business, and carry your freights to the ultimate markets of the world, and allow you to develop your great manufacturing enterprises, and carry the products of your farm and your factory to the Orient and to the Occident; and if you don't financially sustain this great railroad system disaster faces the American people.

"I might go on and discuss the financial problem at greater length, but in a brief way I have given you a summary of what it means.

LABOR PROVISIONS.

"Now, I want to come down to the other problem, and that is labor. It is just as vital to you as finance. It doesn't make any difference whether you be an engineer or a railroad conductor, or whether you run a grocery store in Birmingham, or are at the head of a great steel plant. Labor functioning properly in the great railroad system in this country is necessary to the life of the Nation, so necessary to the life of the Nation that when the time came when the men of America had to save the world from the Hun you told the man who was engaged in railroad labor he need not go to the firing line; that it was more necessary for him to stay on his job. Some of them went and performed gallant service for the country; but they went as volunteers, not by the compulsion of your Government, because your Government realized that this great railroad system must function and go on. That is how vital transportation is to the country, so we have taken a very radical step in the labor world in this bill.

"I am not surprised that labor leaders have criticized it. It would be strange if they had not when first written in this bill and before the rank and file of labor had thought it out. But I think the step that the Senate has taken is necessary, not only for the protection of the American public but for the protection of railway labor itself.

"I told you a while ago the provisions of this bill were reported from the Senate committee, 15 men voting, by a vote of 14 to 1. That 14 to 1 vote carried the labor provisions as well as the financial provision of the bill. A motion was made in the Senate of the United States to strike out the labor provisions in this bill and was defeated by a vote of 47 to 25. Now, that may not mean so much to you. Labor is a very powerful factor in politics, and labor leaders had come before the committee of the Senate and absolutely rejected the provisions of this bill. The Senators of the United States are elected to office by labor as well as by farmers and business men, and they are slow to defy the mandate of a great class unless they feel sure that they are right. And by a vote of 47 to 25 they refused to strike out of this bill its labor features. Now, I think, whether you represent labor or capital or the public, that that should give you cause for consideration. Why, I see men in this audience whom I have known for 35 or 40 years—men who have represented the great labor interests of this district. I don't think that any man there can say, although I have not always agreed with them, that my general attitude against labor in this district has been unfair. Six years ago, when I was a candidate for the Senate, I had some splendid indorsements from the very men who do not agree with me in this position. My friends, does it occur to you—I don't think I am a coward, nor do I think you charge me with that. Neither am I a fool, and I don't think you will charge me with being a fool. I have no desire to antagonize a vast number of the constituency that I have represented here in this county and who have honored me as representative of this district for 20 years unless there is some weighty reason for my doing so and unless I believed there was weighty reason for my doing so.

THE PRECEDENT OF 1916.

"Yet I want to make a confession to you. I am probably more responsible for the labor clause in the Cummins bill than any man in the Congress of the United States, because I first proposed it in the Senate. When the Adamson bill came before the Congress of the United States in 1916 it came there to avoid a great railway strike. The labor and the representatives of the railroads—I won't say labor and capital, because capital had little to say about it; it was the management of the railroads and the labor—could not agree. The President of the United States was appealed to and he could not bring them together, and, finally, labor itself asked the Congress of the United States to solve the problem by Federal statute. Now, some people deny that. One of the leaders of the brotherhoods in my office a week or two ago denied that proposition. 'Ah,' he said, 'but they had not done so officially'; that they had not officially asked the Congress of the United States to solve this problem by a statute; that there was nothing on their

books to authorize such action. I said, 'Mr. Wells, you came into this office and asked me to vote for the Adamson bill, and a committee from the Birmingham district representing railroad labor came to Senator BANKHEAD's office, met Senator BANKHEAD and myself and asked us to support the Adamson bill. We did not ask you for your credentials as to whether you had passed a resolution in your organization to favor the Adamson bill, but you told us that you were the representatives of the four brotherhoods, and you asked us to vote for it. Were we not justified in presuming that your organization was for it?' If they had not stood for it, and if the President of the United States had not asked for it the Adamson bill never would have become a law. What did they ask for? They asked for the Government of the United States to fix the rate of wages and the hours of work. It came from labor, and it was going their way.

PRECEDENTS MUST STAND.

"When men make a precedent they can not deny it. They must stand by their own handiwork; and if there are any railroad men in this hall to-night—I know there are—you know that every word I have just uttered is true. You were right in asking for it when a strike became inevitable. The peace and the happiness of the Nation were threatened. There was nothing that could save it but the Government, and the time had come when the Government should function, and it did function. But I knew then that the Adamson law did not solve the problem; I knew then that if the final decision of governmental authority was right as a temporary expedient, it was right that the Government should fix the rates of wages whenever and as often as the disagreements between management and employees became irreconcilable. I knew that we Members of Congress knew nothing about the real equation involved. How did we know, with the many duties that we have to perform, whether the particular rate of so much per day paid to the man who sits in the engine cab was just or fair or not? The solution of that question requires an expert board, careful deliberation and consideration, and I proposed, when the Adamson bill came to the Senate—this is why I say I am primarily responsible for this proposition—when the Adamson bill came to the Senate I proposed in the Committee on Interstate Commerce that the Interstate Commerce Commission in the future should fix the rate of wage and hours of work of the labor engaged by the great railroad transportation companies of America, and it was favorably reported to the Senate by the committee; and then, although Congress passed the Adamson bill, it got cold feet. It got scared, and when it came to the water jump it would not go over and rejected my amendment, and I only got 14 votes for it at that time.

MAKE NO MISTAKE, THE LAW WILL BE OBEYED.

"Now, that is where this whole thing started, and that idea has grown and grown until it has been passed by the Senate by a vote of 47 to 25, and unless the conferees or the House of Representatives rejects it it will become the law, and if it becomes the law it will be obeyed. Make no mistake about that, the law will be obeyed. [Prolonged applause.] Now, is it right? Is it the right thing to do? That is the problem.

A NATION-WIDE RAILWAY STRIKE.

"A few months ago we were facing a nation-wide coal strike. It looked as if there was no way out. One hundred and ten million people in America did what? They appealed to the President, to the Government, and the Government settled it. There was no permanent law on the statute books for it looking to the particular settlement, but it was worked out, partly under a war-time statute and partly through intervention by the administration. You are in a coal district. You may not have been alarmed, but how about the many hundreds of thousands of householders in America, when that strike was threatened, who thought about winter coming on, the wife and the little ones by the fireside without coal to carry them through the winter? It meant freezing children, sickness, and probably death. No fault of theirs. No part of the responsibility on them. They had nothing to do with fixing the wage. They had nothing to do with the determination of the question whether it was just or unjust; but yet, because one set of men said that this shall be done, and the other set of men said it shall not be done the great mass of the American people were to be made to suffer. That is the place where Government should function. Government is organized for the purpose of protecting the great mass of the people who live in a community from the arbitrary act of any one class. [Applause.]

"What is the soviet government? A class government. What was the organization of the soviet government of Russia? The organization of government by the soldiers and workmen of Russia—class against the mass—and it has resulted in the most

arbitrary, autocratic government that the world has ever known, not in the interest of the people, not even in the interest of the class. It has created a dictatorship, behind which stands the destruction of property and the trail of the life blood of women and children. In this country years ago, when capital was disposed to combine and organize the so-called trusts to control the commerce of the American people, the Government, representing the people, stepped in and passed the so-called Sherman law, and to capital the Government said, 'So far and no farther.' There have not been so many men sent to jail, but there has stood the signboard on the road, and every man has known where he must stop in the public interest.

"Whenever a class arises in this country where caste and class are out of place, whenever a class arises in this country that threatens the life and the peace and happiness of the American people, whether it be capital or labor, or any other class, then comes the time that your Government must function, and your representatives in public life who fail to stand up and do their full duty are recreant in their duty to the public and traitors to the cause of the people. [Applause.]

NO BLOW AT LABOR.

"What have we done in these labor sections of this bill? Have we attempted to strike down labor, organized labor? No. My friends, let us look this question squarely in the face. Bear this in mind as the very first premise, that when labor or the man at the bottom ceases to battle upward, your Nation is dead. Look at Egypt! Look at India! Whenever you destroy the right of battle by which a man may fight his way to the top, you have a dead nation. And it is not the thing you want to do. But when any class gets so strong that they threaten the life of the Nation, then your Government must function or cease to exist as a Government. [Applause.]

"I say I am responsible for this provision of this bill—I mean its main feature—and I think it is just not only to the public but to labor. Now, just let me tell you the personal attitude. I am not saying it in advocacy of myself, but I want to tell you how I approached this subject. Labor has appealed to me many times in the past 24 years to vote for things they wanted, and I have most of the time supported their problems because I thought they were just. I believed the man at the bottom had the right to battle up as long as he was not tearing the other fellow down.

"You know long ago we passed a law requiring that all cars should have certain air-brake equipment, but it did not require that the railroads must be forced to couple them together, and when the crews would get in a hurry they would couple only a few cars close to the engine, and then the brakeman, riding on the rear caboose sometimes, when the engineer put on his air brakes and the slack ran together would be fired out into the sagebrush, because the whole train came together like that, and they appealed for many years for a law to require that all the air or a proper portion of the air should be coupled up. Well, I offered that bill and put it through the House myself. It afterwards became a law.

"There is a good deal of remedial legislation on the statute books that the railroad men of America have proposed and wanted that I proposed in Congress for them. So that I did not approach this subject adverse to them, but I approached the subject in an effort to do what was just both to them and to the American public.

"This bill is not unjust to American labor in the railroads. Under its provisions it says that any two men or more engaged in railroad business shall not enter into a conspiracy to interfere with interstate commerce. It is not applied exclusively to men in the railroad business; the law says any two or more men shall not conspire to interfere with interstate commerce. That includes capital. Two or more general managers can not do it. Two or more men of the public can not do it. Two or more men of the public not connected with the railroad could go out here and oil the track to stop the running of trains, and they would be in violation of the law, or if two or more men engaged in the railroad business as employees conspired together that would be in violation of the law. It relates to everybody.

THE RIGHT TO QUIT WORK.

"Now, I think that law is just, provided that in taking away the weapon of labor to battle upward you give labor something else to take its place. We did take away one weapon of labor to battle upward, but I want you to understand that for that antistrike provision we gave them something else in its place. That antistrike provision says that two or more men shall not conspire against interstate commerce, but it says that nothing in this act shall be construed to prevent any man from quitting his employment. There has been a good deal of talk about this bill taking away the personal right of men and making slaves

of them. The act itself expressly negatives that position. But there is a very great difference between a man quitting his employment and striking. Quitting employment is a matter of personal liberty. It is a matter of personal right, a matter of personal freedom, but to strike means just what it says. It is a weapon of offense; it is a blow directed at the other man to accomplish a purpose. You realize that. [Applause.] Quitting work is not all that is wanted in a strike, for somebody else takes your place. You want higher wages, fewer hours, or something else, and you exercise the blow to force the other man to come to your terms, just as you make use of a blow if you are in a personal combat on the street. That is what strike means. It is not an act of personal liberty, personal protection, individual rights; it is the big stick used against the other fellow. It is a joint or social action falling within the domain or functions of government where the results of the action directly affect the public welfare.

UNIVERSAL RAILROAD STRIKE AND THE PUBLIC.

"Now, my friends, what does a universal railroad strike mean? It ceases to be a blow directed against capital, because, although capital may lose dividends for three or four months while labor is out on a strike, that is infinitesimal compared with what is going to happen to the public. The owners of the railroads may lose a few dollars. Railway investment may lose the earning capacity in 90 days of a fourth of its dividends for a year. What does that mean? But little. It is an operating expense that will be paid in the end by the public. But a universal railroad strike for 90 days in America is directly aimed at the American public. A strike for 90 days means idle factories and foundries, men out of employment, women without food. A strike for 90 days means that the milk trains have ceased to go into the great cities, and the infants are dying in their mothers' arms. A strike for 90 days means that the whole business life of the Nation has ceased to function, and panic and disaster stalks in the land. You know that. The blow is not directed against capital. It is directed against the public to coerce the accomplishment of a result that the public, unorganized, has no power to control.

"My friends, you who have spent your lives at the throttle of an engine, or as a conductor of a railroad train, tell me, if you produce that result in the Birmingham district, how long you could live in this district? Just think about it a minute. Suppose you deliberately, through your organizations, brought on a 90-day strike; assuming that your cause was perfectly just, that you were asking for higher wages and you were entitled to them, and you could not get them out of the railroad management, and because you could not get them out of the railroad management you brought on a strike for 90 days and paralyzed the business life of this Nation and had infants dying in their mothers' arms and men starving for lack of food, how long do you think the public, your neighbor, would stand it? Before the 90 days were out there would be blood in men's eyes and the governor of Alabama would have his troops in Birmingham protecting your homes and your lives if you brought about that result, and you know it as well as I do. The American public is very peaceful as long as it is not affronted, but you strike blood in its face as the German Emperor did, and it arouses itself like a wild animal, and then nothing in the history of the world has ever stood before it since the dawn of this Republic. [Applause.]

PROTECTION TO LABOR.

"I tell you that the provisions of this Cummins bill is the greatest protection that American labor has ever had offered it. American labor can not strike against the American public. [Applause.] More than that, think what it costs you. When I was 30 years younger than I am now I was hotheaded. I wanted to scrap. I wanted to fight the way through, and you younger men who are in the railroad world probably have the chip on your shoulder now and want to scrap it out with anybody that gets in your way. But the railroads in this country have very properly passed or recognized the system of long service, have acquired positions by faithful service. Let me ask an engineer or a conductor in this audience who has served a great railroad system for 20 or 30 years, and, by hard, faithful service, has finally become the engineer or the conductor of the fast mail. He runs out his 100 miles or his day's work in five or six hours. He makes the best wage on the road, or approximates it. He has earned his position for peace in life by labor. His position is just as much an accumulation of that man's time as if he had been a banker and saved his interest and invested it in property. He has invested it in good character and good service and has won his position, and you young, hotheads bring on a universal strike, scrap the whole business, and throw him out of employment; and then this man who is 60 years of age, maybe, after 30 years of service, must he go out and begin

all over at the tail end of a freight train and lay on the side-tracks all night waiting to come home, and do the work over again that he did as a boy? And, if you are a youngster, when you get 30 years older do you want the accumulation of your 30 years to mean nothing more to you than that it can be scrapped overnight? That is what a universal railroad strike would mean to you. That is what the labor chiefs have asked you to maintain as a system. It is an impossible system, an impractical system, where it is a blow directed not against capital but against the American public.

"Now, what have we proposed? What did I propose in 1916? Not that capital can exact the last hour of work from you, not that capital can enforce unjust conditions upon you, but that a board representing the Government of the United States must hear your complaint at any day and reach a just determination as to what is fair and just to you and the public. That is what I proposed in 1916. And what does this bill propose? I did not suggest any penalty clause. I do not think the penalty clause is necessary, but I see no objection to the penalty clause, because I do not think anybody has a right to interfere with the transportation of interstate commerce. The public is too vitally interested. I do not care whether you are engaged in railroading, whether you are a general manager, brakeman, or the outside public, the penalty clause is not necessary, for once you have a Government board to adjust wage scales and working conditions of railroads in America the strike is necessarily gone, because you can not strike against your Government. You know that as well as I do.

COMMON SENSE.

"You know, I think we have come pretty close to an understanding about this matter. All the common sense in the world is not in capital or the public. Labor is possessed of just as much common sense as other people. When this Cummins bill first came before the Senate all four brotherhoods came before the committee and protested, and Mr. Gompers came with them. I have known Mr. Gompers a good many years. I have talked to him about many matters. Mr. Gompers always goes with his crowd. That is very natural. Twenty-five years ago when I first knew Mr. Gompers he was pretty radical. I had many occasions to talk to Mr. Gompers during war times, and he was quite conservative. Men get more conservative as they grow older. Now, Mr. Gompers came before the Interstate Commerce Committee and I cross-examined him on this bill. He said that he was opposed to the penalty clause because it took away a personal right from these men. I differ with him because I do not think there is a personal right involved. The right to hit another man in the head is not a personal right. The right to quit is guaranteed by the bill. But I said, 'Mr. Gompers, if we leave out the penalty clause of this bill, are you in favor of a Government board fixing the wages?' He said no, he was not, because you could not strike against a Government decision. He was right. You can not. Then I said, 'Mr. Gompers, can you tell me some other way by which we can avoid a universal railroad strike in this country, and all the disaster that will follow in its wake, other than the method we have written in this bill?' He said no, that there was no other way. He did not believe this would, but he had nothing else to suggest. In other words, he proclaimed the doctrine that in this great Republic the force of capital or the force of labor must prevail and the battle field must be over the homes of America. That was in August. Last week the press dispatches said that the position of Mr. Gompers and the representatives of the four brotherhoods, in issuing their statement about this legislation, was that they were opposed to the penal features of the bills, but were prepared to accept the remedial part of the legislation, and asked that the legislation be extended to Pullman-car conductors, who had been unfortunately left out. [Laughter and applause.] What are the remedial features of the legislation? So far as the Senate bill is concerned it is that if there is a dispute as to wages or working conditions each side may select a certain number of arbitrators—five, I believe—and they shall try to agree.

"If they agree, then that settles the difference. If they can't agree, then the question shall go to the board of transportation, a Government board appointed by the President, and the board of transportation shall finally determine what is a just wage or what are just working conditions. Those are the remedial features of the bill. Instead of the board of transportation that is created by this bill, in 1916 I proposed the Interstate Commerce Commission, in principle the same. Now, I was not in Washington, but you may refer to the daily papers of this city two or three days ago—I forget the date it came out—and you will see the statement came out from Washington just as I have repeated it. That is a very great change from the testimony that was presented before the committee.

If that statement correctly presents the attitude of the labor leaders, is not that a change that has reflected the sentiment of the great mass of railroad workers of America, who want only what is just and what is right? I think it is. I think it is. Now, let me tell you: If you have a board, if this legislation goes through and you are not satisfied with your wages or working conditions, you, as an individual, if you are engaged in railroad employment, can carry the question to the board of transportation. Or if you belong to the labor union your union can demand arbitration, and if arbitration is not worked out satisfactorily, your union can carry it to the board of transportation and have it determined in a peaceful, orderly way and dispose of the question, and you will not lose your job. You will not lose your daily wage, your family will not have to suffer, and the great American people will not be starved to death while you are doing it. Now, that is what we are offering you. Those are the remedial features of the bill. Well, if you have those remedial features what care you whether there is a provision in there that no man shall conspire to interfere with interstate commerce? While you sit in the cab of the engine, do you want some fellow to conspire to interfere with interstate commerce in a way that may throw your engine in the ditch? I think not. I think it is very good protection to you, although, as I said before as to the real merits of this case, it is not material whether you keep the penal features in or not, because whenever you say that a Government board shall fix the wages of the great railroads of this country the strike is gone. You can not strike against the Government. Even if there were no penal features, the American public would not sustain you in a strike. You could not live up to it. So it is not material about these penal features, except, as I say to you—the man who sits in the cab of the engine—they are more likely to protect you than hurt you.

THE PUBLIC PAYS THE BILL.

"Now, my friends, let me just ask you to look one step further on this question, and I will not detain you very much longer. Since the war began the cost of running the railroads of America, as shown by the report of Mr. Hines, checked up by the Interstate Commerce Commission and its experts, has been \$1,835,000,000 more than it was before the war started. Railroad capital has not paid that. It could not. Why, \$1,835,000,000 is more than the railroads ever paid out in interest on their bonds and dividends on their stock in any one year of their existence. Some people say that this increased cost of wages and material ought to come out of the railroads. Of course, the man who says that is an anarchist. He wants to destroy property. It could not come out of the railroads. One billion eight hundred million dollars is nearly two billions of dollars. There are but about eighteen billions of dollars invested in the railroad business. Divide two billions into it, and it would take nine years for you to eat up all the capital that is invested in railroads, if it came out of capital. At the end of nine years you would not have anything left.

"But, more than that, you can't take it out of railroad capital, because railroad capital has got to exist. If the L. & N. Railroad went broke the capital would remain, and the Government would make you sell it to somebody else that would run the railroad. So you can't absorb railroad capital. Where does it come from? It comes out of the public. Freight rates were increased 50 per cent and passenger rates were increased 25 per cent, and the public pays the bill. And who got it? One billion seven hundred and seventy-five millions of dollars of that increase went to labor, as shown by Mr. Hines's report, and since that report came out another hundred million was absorbed in the adjustment of some minor matters. So that, in fact, the railroad labor has absorbed the entire \$1,835,000,000 of increase in the cost of transportation. The next greatest item of cost to a railroad is coal. Before the war came on the railroads were buying coal at an average of \$2.10 a ton. To-day they are paying \$4 a ton, and one time it went up to \$4.20 on an average. Before the war the railroads were buying steel rails at \$30 a ton. At one time during the war they got up as high as \$57, and to-day they are selling for \$47 a ton. Now, labor has absorbed all of the increase that the public is paying, and yet there is a further increase in the cost of coal, rails, oil, lumber, and everything else it takes to run a railroad. The railroads are very much worse off than they were before there was any increase in freight and passenger rates.

DOUBLE CHARGE AGAINST PUBLIC.

"Now, labor is asking another billion dollars. From whom? Capital? No. Capital can't pay it. Nobody for a minute contends that capital can pay it. They are asking it from the public—the farmer who ships his cotton to market, the pig-iron man who ships his ton of pig iron to Boston, the grocer who is ship-

ping his food to your house. Is that all it is costing you? In the debate in the Senate on this bill I heard it asserted that when you increase freight rates \$1 that by the time that increase got to the consumer it amounted to \$5. I think that was an exaggerated statement, and I don't stand for it; but that was asserted. But it certainly does increase the cost of commodities more than the increase in freight rates, because when the producer sells the raw material and ships it over the rails, the man who buys it, the manufacturer, adds the freight and the cost of the raw material together, and then multiplies his profit into it, whether it is 10 per cent or 25 per cent. When it gets to the jobber he adds the cost of the goods and the freight together and multiplies his profit into it, and when it gets to the wholesaler he does the same thing, and the retailer does the same thing; and that profit runs all the way from 10 to 100 per cent. So I think you are safe to say that for every dollar of increased freight rates you put on the American people, whether you do it for labor or capital or anything else, you put a charge of \$2 on the pockets of the American people when they come to consume it. When you put a dollar of freight on the food of the American people, you charge the American consumer \$2 out of his pocket at least. As I say, some people asserted it was five times as much, but I think that is an exaggerated statement. Well, now, if it is twice as much, then the charge that has been put on the American public for the increased cost of labor on the railroads is not \$1,835,000,000, but it is \$3,670,000,000, and if you put another billion dollars on that for labor that they are demanding now, that is \$2,000,000,000 more that the ultimate consumer of the American public has got to pay for, and that would be \$5,000,000,000 since the war began as the price of increased labor on the railroads that the American consumer has to pay for. How are you going to get down the cost of living? Talk about this being in the interest of labor! There are all kinds of labor.

THE COMMON INTEREST OF LABOR.

"I am not fighting union labor. Union labor has done great things for its class. It ought to battle upward; ought to be allowed to battle upward, but it ought not to be allowed to destroy the public. That is where the line is drawn. Take the clerk in the store. Is not he labor? When he has to feed his family out of his meager salary, is not he interested in this charge that you are putting on him? Is not the man in the mill, the factory, or the ditch digger in the street labor? Has not he got a right to be represented in the determination of this increased cost that you are putting on the food that goes into the mouths of his children? How can he be heard? He is not organized to function in this fight between labor and capital. There is but one way he can be represented, and that is by a Government board. The Government represents that man, and it is the duty of the Government to do justice by him. [Applause.] That is what I have stood for as your representative in Washington. Now, I do not mean to say that the labor on the railroads were not entitled to an increase. I think the increases that were allowed during the war to the conductor and the engineer on the railroads was very reasonable. Their increase amounted to about 35 per cent. It was not at all excessive. There was the highest skilled labor on the railroads. It was not at all excessive when you consider the increased cost of living. But there are some other classes of labor that received increases from 100 to 150 per cent, for which there was no reason, to that extent, and the increase in wages of that class of labor prevented the conductor and engineer from getting a more adequate increase. And why? Because it was not done by a board that carefully analyzed and worked out the situation. I am in favor, if you are going to have any further increases in this matter, of having a board, a Government board, a Government board of experts, a just board, to sit in and analyze this situation and visualize it from every standpoint, and then do justice by the men.

"I am not in favor of cheap wages. It is a mighty good thing for any community and any public to pay labor as good a wage as it is possible without destroying business, because the wages of labor are always spent in the community to build it up and encourage business. But there is a line that you have got to draw. When you go with wages beyond a certain limit, business ceases to function. When you go beyond the limit, your producer or manufacturer that can not go into a competitive market and sell his goods at a profit then ceases to work.

THE GREAT EQUATION.

"Now, those are all the problems that you have got to solve in this great equation, with the life of the public involved. And as your representative in the United States Senate, do you want me to stand for the problem of solving that question on

the battle field of a great strike, where force and anger and discord sit at the judgment seat, or do you want me to stand for the problem that a high court of governmental justice, a board appointed by the President of the United States, representing the best interests of all the people of the United States, shall sit in judgment and decide the equation for you justly? [Applause.] That is what I have done. That is what I stand for.

"Now, let me say to my constituency: For nearly a quarter of a century I have represented you in the halls of the Congress of the United States in one branch or another. I do not attribute to myself any undue courage. I try to follow your wishes when I can. I do not attribute to myself any undue virtue; but I want you to understand that when I function for you and write your laws on the statute books it must be in the interest of the entire people of Alabama [applause], and abstract justice and right must stand behind your demands. Now, labor is entitled to one great demand, and that is social justice, and there is no man in the American Congress who is more desirous of giving them absolute social justice than I am; and by "social justice" I mean that the high ideals of American life, American liberty for American labor, shall be maintained; that the sanctity of your home and your fireside, the education of your children, and the future development of your class, and the opportunity to rise to any high ideal in this great American Republic shall be yours. [Applause.] But when you lift your mailed fist against the life, the happiness, or the prosperity of the great body of the American people to accomplish your own desire, whether it be selfish or unselfish, then, so far as I am concerned as a Government officer, I will say, 'Here you must stop.' [Prolonged applause.]"

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles and referred to the Committee on Pensions:

H. R. 9281. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War and to widows of such soldiers and sailors;

H. R. 10515. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War and to widows of such soldiers and sailors;

H. R. 11310. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war; and

H. R. 11554. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors.

SEDITIONARY ACTS AND UTTERANCES.

The VICE PRESIDENT. Morning business is closed.

Mr. STERLING. I move that the Senate proceed to the consideration of the bill (S. 3317) to prohibit and punish certain seditious acts against the Government of the United States and to prohibit the use of the mails for the purpose of promoting such acts.

The motion was agreed to; and the Senate resumed the consideration of the bill.

Mr. BORAH. Mr. President, is there any amendment to the bill pending?

The VICE PRESIDENT. No amendment is pending unless it be that of the Senator from Idaho, and the Chair does not know whether or not that is pending.

Mr. BORAH. Mr. President, if I could have a reasonably full Senate, I should not object to taking a vote on the amendment. I dislike very much, however, to dispose of a matter which I believe to be of importance at a time when, for different reasons, a great many of the Senators are necessarily absent.

I wish to call attention to this amendment, for fear that some of those who are present to-day were necessarily absent on yesterday when we were discussing it. This is an amendment to section 3 of the bill. Section 3 of the bill is the nonmailing provision, and it provides:

Sec. 3. That every document, book, circular, paper, journal, or other written or printed communication in or by which there is advocated or advised the overthrow by force or violence or by physical injury to person or property of the Government of the United States or of all government, or in or by which there is advocated or advised the use of force or violence or physical injury to or the seizure or destruction of persons or property as a means toward the accomplishment of economic, industrial, or political changes is hereby declared to be nonmailable and the same shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

The amendment which I propose does not change the language of this section at all; it does not modify it in any respect. It simply provides a hearing under certain conditions for those who may be affected by the order of the Postmaster General in excluding printed or written matter from the mails. I will read the amendment so that it may be understood. It is as follows:

Provided, That any author, publisher, or party affected or aggrieved by the action of the Postmaster General in excluding materials from the mails under this section shall, upon filing a bond to cover the actual cost of such proceeding, be entitled to a hearing de novo before a judge of the Federal court of the district or circuit in which the party affected or aggrieved resides. But in case the party aggrieved or affected is successful in securing the admission of his mail matter to the mails he shall not be liable for the cost of the proceedings, and the court shall have power during the pendency of the proceedings in court to suspend the order of the Postmaster General: *Provided further*, That no such court proceedings shall bar or interfere with any criminal prosecution under the terms of this act.

It will be observed that the amendment simply provides a hearing de novo before a Federal district or circuit judge in case the party files a bond to cover the costs; and unless the judge, upon a showing, issues an order affirmatively suspending the order of the Postmaster General, the order of the Postmaster General is in nowise interfered with, and the matter continues to be excluded from the mail during the hearing.

The amendment does provide that the judge has power to suspend the order of the Postmaster General; but, of course, that must be upon showing; and everyone, I presume, would agree that there could be no danger of any seditious literature of a distinctively serious nature passing by a Federal judge; but it gives an opportunity for a hearing upon the part of those who may be publishing a magazine, a weekly or a daily paper, who contend that they are not within the law, and who want an opportunity to present their cause in an open, public way.

Mr. CHAMBERLAIN. May I interrupt the Senator a moment?

Mr. BORAH. I yield.

Mr. CHAMBERLAIN. Does the Senator think he has provided with sufficient distinctness the method of procedure in the Federal court in case proceedings are had?

Mr. BORAH. I think so, because it is really simply utilizing the Federal judge to hear the matter the same as the Postmaster General would hear it. I would be glad to accept any suggestion with reference to that, but after discussing it with some other Senators privately it was concluded that, perhaps, the amendment would cover it, and I so frame the language that any author, publisher, or any party affected or aggrieved by the action of the Postmaster General in excluding matter from the mails under section 3 shall, upon filing a bond to cover the actual costs of the proceeding, be entitled to a hearing de novo.

Mr. CHAMBERLAIN. I presume it would be in the nature of a petition to the judge setting forth the grievance which the party has?

Mr. BORAH. I think it would result in this way: The party aggrieved would simply file his bond, and then the Postmaster General would send the papers that were before him to the judge.

Mr. CHAMBERLAIN. That was the question which suggested itself to my mind—who takes the initiative? The aggrieved party files his bond, of course; but the amendment is silent then as to whether the Postmaster General shall present the papers to the court, or the aggrieved party shall present his case by petition and ask that the Postmaster General be required to suspend his order.

Mr. BORAH. I think that it might be done in either way; the party could, by petition, present the case, if the Postmaster General failed to do so; but the Senator from Oregon will observe that until the party filing his bond takes the initiative, the matter continues to be excluded from the mails.

Mr. CHAMBERLAIN. It continues to be excluded from the mails, even after the filing of the petition and the giving of the bond, until the finding has been made by the judge.

Mr. BORAH. Exactly. So, if it is bad literature, it continues to be excluded unless the question is presented to the judge in such a way that the judge makes an affirmative order canceling the order of the Postmaster General. The able Senator from North Carolina [Mr. OVERMAN] the other day stated that a vast amount of seditious literature was going into the South to the colored people, the sponsors for which nobody had knowledge. That would not be affected by the amendment at all; such matter would be excluded from the mails, because the identity of the sender is unknown. No action can be taken until the party sending it comes forward and files his bond and puts himself in court so that he may be dealt with. That is not interfered with at all.

Mr. CHAMBERLAIN. There is only one other provision in the Senator's amendment as to which I desire to ask him a

question. I have always thought it was rather unjust in all criminal proceedings in the Federal courts that a defendant, even though acquitted, was not entitled to recover his costs; that is, he has to pay for the attendance of his own witnesses and other costs that might be assessed against him, and there was no chance to recover against the Government. The Senator places the party in this proceeding in a different category from the ordinary defendant in a criminal case. Does the Senator think that there ought to be any discrimination made?

Mr. BORAH. I think that the party ought to be entitled to recover his costs. I will say to the Senator, however, that this amendment does not represent by any means what the Senator from Idaho desires; neither does it represent what the amendment when first presented was intended to accomplish; but when I first presented it I found I could not get very much support for it, and therefore I undertook to modify it in order to get it through. I have, therefore, cut out some of the things that I very much desire to have in the amendment. I think there ought to be a provision to the effect that in case the party is successful he shall recover his costs.

Mr. WALSH of Montana. Mr. President—

Mr. BORAH. I yield to the Senator.

Mr. WALSH of Montana. I can see no objection at all to the amendment proposed by the Senator from Idaho, and I am going to give it my support. I wish, however, to call the attention of the Senator to the fact that the provision in the amendment concerning costs will be of no use, as the Senator will realize, I am sure, upon reflection.

Mr. BORAH. I do not quite understand the Senator.

Mr. WALSH of Montana. I say that the provision in the amendment concerning costs will be of no value whatever, because costs can not be taxed against the Government, and, if the applicant is successful, of course he can not be taxed for the Government's costs.

Mr. BORAH. That is the reason why it was suggested that there was no occasion for putting in the amendment a provision taxing the costs against the Government, because costs can not be assessed against the Government, but in order to make it clear I wanted the party relieved from all question of costs in case he was successful.

Mr. WALSH of Montana. But there is no statute under which costs may be taxed against a successful litigant.

Mr. BORAH. Very well; then it will not do any harm.

Mr. WALSH of Montana. It will not do any harm, but it is useless to put it in.

Mr. BORAH. Perhaps so. I rather think the Senator from Montana is correct about that. I have no particular objection to striking it out, except it has a kind of consoling effect.

Mr. WALSH of Montana. The amendment reads:

But in case the party aggrieved or affected is successful in securing the admission of his mail matter to the mails he shall not be liable for the cost of the proceeding.

There is no statute making him liable, and, of course, it is contrary to every concept we have of cost statutes that he should be made liable. I submit to the Senator that it does not mean anything.

Mr. BORAH. I think, as a legal proposition, the Senator from Montana is right.

Mr. JOHNSON of South Dakota and Mr. STERLING addressed the Chair.

The VICE PRESIDENT. Does the Senator from Idaho yield; and if so, to whom?

Mr. BORAH. I think the junior Senator from South Dakota first rose. I will yield to him, and then to the senior Senator from South Dakota.

Mr. JOHNSON of South Dakota. I could not quite hear the substance of the amendment as it applies to the stoppage of the paper during the process of trial or investigation.

Mr. BORAH. The amendment does not interfere with the Postmaster General's order excluding the mail unless the court, upon a showing, sets aside or cancels the order of the Postmaster General.

Mr. JOHNSON of South Dakota. During the time that the case is tried does the paper continue to be put out as usual until the decision of the court?

Mr. BORAH. If continues to be excluded from the mails. I now yield to the Senator from South Dakota.

Mr. STERLING. Mr. President, I should like to ask the Senator from South Dakota if he intends the amendment to mean just as it reads in regard to a trial or hearing de novo before the Federal court? Does the Senator understand it is to be a hearing before the judge?

Mr. BORAH. It is to be a hearing.

Mr. STERLING. Before whom—the judge?

Mr. BORAH. Yes; before the judge.

Mr. STERLING. I think, then, Mr. President, with that understanding, and with the understanding that the latter part referred to by the Senator from Montana in regard to costs is to be stricken from the amendment, I shall be willing to accept the amendment.

Mr. BORAH. What is the necessity of striking out the costs provision?

Mr. STERLING. Because I agree with the Senator from Montana that it is absolutely useless.

Mr. WALSH of Montana. Mr. President, if I may interrupt the Senator, I would tender an amendment to the amendment offered by the Senator, striking out all of the amendment commencing with the word "But," on line 7, down to and including the word "and," in line 10; that is—

But in case the party aggrieved or affected is successful in securing the admission of his mail matter to the mails, he shall not be liable for the cost of the proceedings.

Then make a period and begin:

The court shall have power during the pendency of the proceedings in court to suspend—

And so forth.

Mr. BORAH. It is the judgment of the Senator from Montana that with that stricken out, if the party were successful, no costs would be taxed against him?

Mr. WALSH of Montana. Why, I am entirely satisfied of that.

Mr. BORAH. And the reason for striking it out is purely because it is ineffective?

Mr. WALSH of Montana. Yes.

Mr. BORAH. Is that the understanding of the Senator from South Dakota?

Mr. STERLING. I will say to the Senator from Idaho that that is my understanding.

Mr. BORAH. I do not know, myself, of any statute by which the costs could be taxed against him.

Mr. WALSH of Montana. I may say to the Senator that I object to its being in the amendment, because it introduces a departure which might give rise to some question in the future.

Mr. BORAH. Well, I accept the amendment.

Mr. JONES of New Mexico. Mr. President, I should like to inquire of the Senator from Idaho, who would pay the costs of the petitioner's own witnesses in a case such as that? If he is to have legal process to bring witnesses into court, so that they would be entitled to mileage and per diem, under the language of the amendment, as modified by the suggestion of the Senator from Montana, who would pay the costs of securing the witnesses for the petitioner?

Mr. WALSH of Montana. Mr. President, the subject of costs would be regulated by the general costs statute. The prevailing party is entitled to costs against the unsuccessful party, except in the case of the United States, where the prevailing party can recover no costs against the United States; so that if he succeeds he can not get back any costs against the United States. If he is defeated, the subject of costs is left to the control of the general statute.

If he wants to get witnesses, he must tender to the witnesses their fees, of course. He must tender them their per diem. If he wants to set the officers of the law in operation to procure the attendance of witnesses, he must, of course, tender the officers their fees for making the service of subpoenas. If he prevails, he is in the same situation as everybody else who sues the United States; he can not get back any costs, and it is not expected that he shall. It is simply provided that he shall not be liable for the costs of the other party. He is liable, of course, for his own costs. He has to pay those in advance. He has to advance to the witnesses, and he has to advance to the officers, all of their fees and costs in the first place, and he is not permitted to recover any judgment against the United States to get those back.

Mr. BORAH. Let me ask the Senator a question: Suppose the party were successful in securing the admission of his mail matter to the mails, and nevertheless the court, by reason of some view which he might take of the case, felt that each party should pay his own costs. Could not the court make an order adjudging that the party should pay those costs which he himself had incurred?

Mr. WALSH of Montana. That is the very point I am making. He is obliged to do that, anyway.

Mr. BORAH. No; I do not think the Senator understands me. Suppose that A files his bond and transfers the controversy to the judge. The judge reverses the order of the Postmaster General, but he says, "I think, nevertheless, though the party is successful here, that he should pay the costs." Has he not the power, under statutes which now exist, to assess those costs against him?

Mr. WALSH of Montana. No, Mr. President. Under the prevailing statute, of course, the court can regulate costs in all equity cases and distribute them as the case may require, but the complainant is always obliged to bear in the first place whatever costs he incurs. Now, unfortunately, in cases against the United States he never can get those back. He is always obliged to sustain those costs, so that if the court should order that he pay his own costs the court would be ordering him to do only what he is obliged to do anyway; and the court, of course, could not impose upon him the costs of the United States if he were successful.

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator? Does the Senator from Montana think the rule would be changed in any respect where the proceeding was really not in the name of the United States, but in the name of the Postmaster General, who might be acting outside of his jurisdiction in having undertaken to enforce the law? If it were the Postmaster General as an individual, arbitrarily acting, would the same rule apply to him that would apply if the Government were the losing party or if the Government were the party to the proceeding?

Mr. WALSH of Montana. I can not conceive that the proceeding would be regarded as anything except a proceeding against the Postmaster General as an agency of the United States. Of course it is against an official act of his that the proceedings are directed. I think that he does it by virtue of his office and claiming to discharge the duties of his office under the laws regulating the duties of his office.

Mr. STERLING rose.

Mr. BORAH. Does the Senator from South Dakota wish to address a remark to me?

Mr. STERLING. Nothing further than to repeat what I said, that if the Senator from Idaho agrees to strike out the provision relative to costs I will accept the amendment, so far as I am able to do it.

Mr. BORAH. I ask permission, then, if I have a right to do so under the rule, to modify my amendment by striking out the clause which reads as follows:

But in case the party aggrieved or affected is successful in securing the admission of his mail matter to the mails he shall not be liable for the costs of the proceedings, and—

Make a period there and commence the word "the" with a capital—

The court shall have power during the pendency of the proceedings—

And so forth. Does that meet the view of the Senator from Montana?

Mr. WALSH of Montana. Yes, Mr. President.

The VICE PRESIDENT. Does the Senator from Idaho offer this as an amendment?

Mr. BORAH. I offer it now, with that stricken out, as an amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Idaho as modified.

The amendment as modified was agreed to.

Mr. STERLING. Mr. President, on behalf of the committee, I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. In line 3, on page 2, after the word "property," it is proposed to strike out the comma and insert a semicolon; in the same line it is proposed to strike out the word "or," after the word "property," and to insert in lieu thereof "and it shall be unlawful for any person," so that, if amended, it will read:

Or to advise or advocate a change in the form of government or the Constitution of the United States or resistance to the authority thereof by force or violence or by physical injury to person or property; and it shall be unlawful for any person by force or violence to prevent, hinder, or delay—

And so forth.

Mr. STERLING. This amendment is simply for the purpose of clarifying the language, that is all. Hence, the semicolon after the word "property," and then the use of the words "and it shall be unlawful for any person," to indicate the introduction of a new clause, completing the clause which is already in the bill.

Mr. BORAH. Mr. President, I do not understand this amendment. The Senator from South Dakota says it is to clarify the language. That might mean a whole lot under this bill.

Mr. STERLING. I will read the language of the bill, and then the amendment, so that the Senator will see where it comes in:

To advise or advocate a change in the form of government or the Constitution of the United States or resistance to the authority thereof by force or violence or by physical injury to persons or property, or by force or violence—

It is a little ambiguous now; it is not quite clear as to whether that which follows is connected with what precedes, and so I just add the words "and it shall be unlawful for any person." It is intended that it shall be unlawful for any person by force or violence to prevent, hinder, or delay, or attempt to prevent, hinder, or delay; but you have to go back several lines in order to get the connection, and I make it complete by inserting there again the words "and it shall be unlawful for any person."

Mr. BORAH. Is that section 1?

Mr. STERLING. It is section 1.

Mr. WALSH of Montana. Mr. President, it is my opinion that with the exception of section 3 of this bill there is nothing in it that ought in the Senate of the United States to provoke the slightest opposition—indeed, I feel justified in saying the slightest discussion. I fully agree that there may be very honestly differing opinions concerning the wisdom of section 3 of the bill, but I believe that every legitimate objection that may be urged against that section is entirely removed by the amendment which the Senate has just adopted, tendered by the Senator from Idaho. Yet it is a marvel that a bill of this character should have received the attention, by way of opposition, that has developed against it and legislation of like character.

Mr. President, no one undertakes to assert that this bill is a remedy for whatever evils there are in our institutions and in our system of government which breed, if they do breed, the efforts to overturn the Government at which this bill is aimed. Those are to be taken care of by other legislation. But, Mr. President, since government began, even in its most elementary forms, there never was a time when any government could tolerate an effort to overthrow it by force or violence. It is a principle that is as applicable to the most complete and thoroughgoing of republics and democracies as it is to the old patriarchal form of government and even the most autocratic of modern systems. No government can tolerate anything of the kind, nor can it tolerate the advocacy, either by oral or written language, of efforts of that character.

Mr. President, there was a time in our history when we might, as has been suggested even upon the floor of the Senate, allow the loud-mouthed anarchist freely to express his views and purposes in public, depending upon the general good sense of the people of this country and their attachment to the principles of our Government to counteract whatever possible evil there might be in the assertion; but that time has gone by, and everybody recognizes that it has gone by. We have in our midst here a vast multitude of people who have no appreciation whatever of our institutions. They are not imbued with their spirit at all. They came here poisoned with political ideas that they have absorbed in the midst of some oppressive, autocratic system of some country in Europe with which they are more or less familiar and whose tyranny they have felt, and fired with a purpose to overthrow the Government and to overthrow all governments. Many of those subject to the influence of such agitators not only are unappreciative of our institutions and of the principles which underlie them, but they are utterly unable to read our language and advise and inform themselves concerning these matters. Papers, documents, pamphlets, newspapers, in their particular language, are laid before them advocating the doctrine that red revolution is the only remedy for the wrongs that need correction, with the necessary result that the readers are imbued with the ideas which they promulgate and seek to enforce.

Early in the present session, Mr. President, upon the occasion of the concerted attempt to take the lives of a great number of the foremost men of the country, including the Attorney General of the United States, by assassination, I introduced a bill substantially like that which is now before the Senate for consideration. It will be recalled that at the scene of the attempted destruction by a bomb of the home of Attorney General Palmer, with the occupants thereof, early in the month of June, there was found a leaflet or pamphlet entitled "Proclamation of a Revolution—Plain Words," which I introduced into the Record, and which is found therein under date of June 3, 1919. I read briefly from it, as follows:

PROCLAMATION OF A REVOLUTION FOUND IN EFFECTS OF ANARCHIST—PLAIN WORDS.

The powers that be made no secret of their will to stop, here in America, the world-wide spread of revolution. The powers that must be reckon that they will have to accept the fight they have provoked.

A time has come when the social question's solution can be delayed no longer; class war is on and can not cease but with a complete victory for the international proletariat.

The challenge is an old one, oh, "democratic" lords of the autocratic Republic. We have been dreaming of freedom, we have talked of liberty, we have aspired to a better world, and you jailed us, you clubbed us, you deported us, you murdered us whenever you could.

Now that the great war, waged to replenish your purses and build a pedestal to your saints, is over, nothing better can you do to protect

your stolen millions and your usurped fame than to direct all the power of the murderous institutions you created for your exclusive defense against the working multitudes rising to a more human conception of life.

The jails, the dungeons you reared to bury all protesting voices, are now replenished with languishing conscientious workers, and, never satisfied, you increase their number every day.

It is history of yesterday that your gunmen were shooting and murdering unarmed masses by the wholesale; it has been the history of every day in your régime, and now all prospects are even worse.

Do not expect us to sit down and pray and cry. We accept your challenge and mean to stick to our war duties. We know that all you do is for your defense as a class; we know also that the proletariat has the same right to protect itself since their press has been suffocated, their mouths muzzled, we mean to speak for them the voice of dynamite, through the mouth of guns.

Do not say we are acting cowardly because we keep in hiding; do not say it is abominable; it is war—class war—and you were the first to wage it under cover of the powerful institutions you call order, in the darkness of your laws, behind the guns of your bone-headed slave.

No liberty do you accept but yours; the working people also have a right to freedom, and their rights—our own rights—we have set our minds to protect at any price.

We are not many, perhaps more than you dream of, though; but are all determined to fight to the last, till a man remains buried in your bastles, till a hostage of the working class is left to the tortures of your police system, and will never rest till your fall is complete and the laboring classes have taken possession of all that rightly belongs to them.

There will have to be bloodshed; we will not dodge; there will have to be murder; we will kill, because it is necessary; there will have to be destruction; we will destroy to rid the world of your tyrannical institutions.

We are ready to do anything and everything to suppress the capitalist class, just as you are doing anything and everything to suppress the proletarian revolution.

Our mutual position is pretty clear. What has been done by us so far is only a warning that there are friends of popular liberties still living. Only now we are getting into the fight, and you will have a chance to see what liberty-loving people can do.

Do not seek to believe that we are the Germans' or the devil's paid agents; you know well we are class conscious men, with strong determination and no vulgar liability. And never hope that your cops and your hounds will ever succeed in ridding the country of the anarchistic germ that pulses in our veins.

We know how we stand with you, and know how to take care of ourselves.

Besides, you will never get all of us—and we multiply nowadays. Just wait and resign to your fate, since privilege and riches have turned your heads.

Long live social revolution! Down with tyranny!

It is to prevent the circulation of literature of that character that this bill is intended, and who is there to say that it is not just and wise that this effort should be made and the necessary legislation enacted?

Mr. President, it is not difficult at all for any man who desires to understand to appreciate just exactly the distinction between literature that is protected by the constitutional guaranty of freedom of speech and of the press and literature which is subject to the provisions of this act. The matter was considered by the Court of Appeals of the State of New York in the famous case of *The People against John Most*. It will be recalled that it was charged, and very generally believed, that the assassination of President McKinley was directly attributable to the teachings of this most undesirable alien. I want to read with some freedom from the report of that case, and then from another document, for the purpose of making entirely clear, so far as I can, where the distinction lies between literature the circulation of which can not be prohibited and literature the circulation of which can be prohibited, and which ought to be prohibited. Speaking of the defendant, the opinion says:

He was the publisher of a weekly newspaper called the *Freiheit*, and the wrongful act consisted in the publication of an article in that paper advocating and advising revolution and murder.

The object of the article, as we interpret it—

Says the court—

was not to criticize or discuss public officers or public affairs but to denounce government as "murder dominion" and to advocate the murder of those who govern. While it was written with special reference to rulers who wear crowns, it recommends the murder of all rulers, without exception, express or implied. The argument is that as the enforcement of law is murder, the assassination of those who enforce the law is not only justifiable but to spare them would be a crime. It calls the constituted authorities murderers, and urges its readers to "murder the murderers." Its tendency is to incite and stimulate the destruction of government and its agents "through blood and iron, poison, and dynamite." It teaches the doctrine that government is founded on murder; that all rulers are enemies of the human race; and that "crime directed against them is not only right but it is the duty of everyone who has an opportunity to commit it and it would be a glory to him if it was successful." The publisher exhorts his readers to "let murder be our study, murder in every form," when directed against those who preserve order and enforce law. Government is described as "reaction," and not only is the murder of those having authority upheld and urged but revolution against government as "the attacking party" is proclaimed as "nothing more than necessary defense."

The court says with respect to that matter:

He not only defended but advised the most serious crime known to the law. His language was an invitation to murder. He who counsels murder becomes a murderer if his advice is taken. Such advice given to the 3,000 subscribers and to more than that number of readers of the defendant's paper might naturally, as the history of the times shows, result in violence and murder. The courts can not shut their

eyes to the fact that there are elements in our population, small in number, but reckless and aggressive, who are ready to act on such advice and to become the assassins of those whom the people have placed in authority. The public peace is seriously endangered when arguments are made and advice given which may naturally result even in a simple breach of the peace, and when the arguments and advice are of such an alarming and dangerous character as to naturally lead to the assassination of public officers, punishment and repression are essential to the welfare of society and the safety of the State. We think that the act of the defendant was a violation of the Penal Code and constituted a misdemeanor under the section cited.

Then the defendant urged in his defense, almost as has been urged here upon the floor of the Senate, that he was protected in publishing the matter complained of by the constitutional provision guaranteeing freedom of speech and of the press, and he cited the constitution of the State of New York upon that subject. The court in answer to this contention says:

The constitution of our State provides that "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

The constitution does not protect a publisher from the consequences of a crime committed by the act of publication. It does not shield a printed attack on private character, for the same section from which the above quotation is taken expressly sanctions criminal prosecution for libel. It does not permit the advertisement of lotteries, for the next section prohibits lotteries and the sale of lottery tickets. It does not permit the publication of blasphemous or obscene articles, as the authorities uniformly hold. (*People v. Ruggles*, 8 Johns. 290, 297; *People v. Muller*, 96 N. Y. 408; *In re Rapier*, 143 U. S. 110.) It places no restraint upon the power of the legislature to punish the publication of matter which is injurious to society according to the standard of the common law. It does not deprive the State of the primary right of self-preservation. It does not sanction unbridled license nor authorize the publication of articles prompting the commission of murder or the overthrow of government by force. All courts and commentators contrast the liberty of the press with its licentiousness and condemn as not sanctioned by the constitution of any State appeals designed to destroy the reputation of the citizen, the peace of society, or the existence of the Government. (*Story on the Constitution*, 1878; *Cooley on Constitutional Limitations*, 518; *Ordronaux on Constitutional Legislation*, 237; *Tiedeman on Police Powers*, 81.) We think that no constitutional right of the defendant was violated by his conviction and that the judgment pronounced against him was rendered in accordance with law.

That opinion was concurred in by every member of the court. Mr. BORAH. Mr. President, I think that case states the law precisely as it is. Freedom of the press does not mean a man shall be exempt from the consequences of the abuse of the right. The only contention I have ever made here—and that is what the Senator referred to—is that under the first amendment of the Constitution of the United States there is no power in Congress by which it can put any previous restraint upon publications; that there is no power by which you can establish anything which has the nature of a license system. If the party publishing publishes that which is libelous, or that which is calculated to incite force and violence against the Government, he is responsible for the consequences. I do not disagree at all with that authority. But you can not censor his publication. He has a right to publish on his own initiative and without leave or license. If he abuses his right he may be punished.

Mr. WALSH of Montana. Leaving section 3 of the pending bill out of consideration, there is not anything in it that is anticipatory in character at all. It makes it penal to do these things, and, of course, the man can not be punished for doing them until after the thing has been done.

Mr. President, I want to call attention upon the other hand to the character of literature that we can not repress. Much has been said here, quoted from statements made outside the Chamber chiefly, about an effort to prevent criticism of the Government or the advocacy of changes in our form of government. So long as those go on by appeals to constitutional methods, by arguments addressed to the reason of the readers, it is not only impossible, but it is eminently undesirable, to repress them in any way whatever.

I have before me a very interesting document entitled "The Poison in America's Cup," purporting to have been written by one Philip Francis, who takes to himself the credit of being the author of most of the editorials appearing during the last year in the Hearst newspapers. This advocates the entire overthrow of our existing system of government. It proposes not only the abolition of the United States Senate, but of the office of President of the United States, and proposes to repose all power, legislative and executive, in a single parliamentary body.

Not only that, Mr. President, but it proposes that that parliamentary body shall be elected, not by the general body of the people but chosen by classes, the farmer class to have representatives and the manufacturing class to have representatives. It may not have been as carefully read by many Members as I have studied it, and I accordingly take the liberty to read at some length from it. I read from chapter 12, as follows:

Fortunately there is neither any need nor any excuse resorting to violence in our country in order to change our political or industrial system. The Constitution prescribes an orderly, legal, peaceable method of changing our system of government whenever we want to do so.

We can summon a constitutional convention whenever the majority thinks it should be done, and we can institute an entirely new system of government without firing a gun or shedding a drop of blood.

Any man who advocates the use of force to effect political or industrial reforms in our country is a fool—as big a fool as the man who advocates the use of police power and jails to stifle free speech and free discussion of reforms in government.

The resort to violence to overthrow a despotic government in such a country as Russia, for example, is always justifiable. The Russian people had no orderly method to use. Our fathers took the same method. The men of the French Revolution followed their example. The American Revolution, the French Revolution, and the Russian revolution are the three great political events of modern history. The gratitude of ages is due all three.

But America can and ought to carry through another revolution, as far-reaching and beneficent as either of the other three, without even a hint of violence. What we ought to do is to abolish our out-of-date system of government, with three independent branches, each with independent authority, and our present system of electing representatives who are beyond popular control, and then replace these obsolete systems with a purely democratic system of government, in which all the powers of government will be lodged in a single body of representatives, who will be elected directly by the people, voting in occupational groups instead of geographical groups, and will be subject at any time to dismissal from office by the group which elected them.

Let me show how this would work.

In the first place, we would have no President and no more one-man power to coerce the representative body; to plunge the Nation into war, without asking the people whether they wanted to go to war or not; to appoint the Supreme Court and the Federal judges, and thus hold control over the administration of the laws; to appoint a Cabinet ministry responsible to himself only and entirely beyond the control of the Congress or the people; and to be in actual practice more autocratic than the constitution of the German Empire ever permitted the German Kaiser to be. We do not need a President any more than Great Britain needs a King. Both can be and ought to be dispensed with by a free, self-governing democracy. The Congress would then become the sole repository of all powers, both in peace and in war, and the administration of domestic and foreign Federal affairs would be conducted by committees, directly responsible to the popular assembly.

With all power thus lodged in the popular assembly, the one thing essential to direct people's rule would be the election of a body truly representative of the people and their direct control by the people. These would be assured by a radical change in our election machinery, through which the people would vote in occupational groups, and by the universal application of the initiative, the referendum, and the recall.

Voting by occupational groups is the most important of these political reforms.

Then the author tells how Congress would be constituted when thus elected by such occupational groups:

There will be representatives of agricultural occupations, 165; of mining occupations, 15; of mechanical occupations, 140; of transportation occupations, 35; of trade occupations, 50; of professional occupations, 20; of domestic-service occupations, 50; and of clerical occupations, 25.

Now, Mr. President, no one could advocate, scarcely anyone could propose a change in our system of government more thorough and complete, more radical than that thus proposed. It denounces our whole system from beginning to end as utterly wrong and declares that it ought to be changed; but it is proposed to change it not by violence, not by force, not by the destruction of life and property, but in the manner provided by the Constitution and the laws of the country.

However we may differ with those doctrines, however inimical we may think the teaching of them is to the public welfare, there is no power in the Congress of the United States nor in any department of the Government to prevent the publication of literature of that character or the dissemination of it through any means whatever. It is protected by the guaranty of the freedom of speech and of the press in the first amendment to the Constitution.

Mr. BORAH. But we may pass a law excluding it from the mails?

Mr. WALSH of Montana. I rather doubt that.

Mr. BORAH. I am very glad to have the Senator say so; but if we follow the case of *ex parte Jackson* as the department and the Postmasters General have construed it, we could undoubtedly do so. However, I think the Senator is correct as to the limit even of the power of exclusion from the mails.

Mr. WALSH of Montana. I have not examined the matter with particular reference to that point, but my recollection of the opinion dealing with the subject is that it leaves it open to question as to whether the power of Congress in the matter is unlimited and unrestricted by the first amendment to the Constitution. I do not believe that question has ever been definitely determined by the Supreme Court. My own judgment about the matter, which is not worth much without having given special consideration to it, is that such a document can not be excluded from the mails, that even that would be a violation of the Constitution.

But I call attention to these two classes of literature for the purpose of eliminating, if I can, from the consideration of the question any suggestion that we are invading the rights of any citizen of the United States under the first amendment to the Constitution by the legislation which is before us.

One of the Members of this body opposing the legislation spent much time in endeavoring to demonstrate to the Senate that

the legislation is not necessary at all, because we now have statutes ample to cover the cases to be reached by it.

The Attorney General of the United States thinks that we have not; the Judiciary Committee of the Senate thinks that we have not. I have given some consideration to the subject personally, and I am satisfied that we have not.

If we have legislation covering the case, why should anyone be opposing this particular legislation?

I think it has been too long delayed, and I hope that we may have speedy action on the bill now before us.

Mr. BORAH. Mr. President, in view of the remarks of the Senator from Montana [Mr. WALSH] I wish to say a word. The objection which I have had to all these measures has rested largely upon those provisions which have to do with the use of the mails. I have never felt the same uneasiness about the other drastic features of the law if we could have a hearing such as we must have, of course, when we are trying parties under section 1 of the bill. But I can take the statutes which are now upon the statute books, together with the provisions of this bill, and as Postmaster General can practically edit or destroy every newspaper in the United States. It is that feature of the bill to which I object, and it is that feature in which in my judgment we have already gone beyond our constitutional powers.

I do not accept the view—the Senator from Montana has not urged that view, and therefore I am not controverting what he has said—I do not accept the view urged in other places, however, that we can exclude any printed matter from the mail and to any extent that we want to do so. You can not go to the extent of interfering with the freedom of the press even under a provision of the Constitution which gives us jurisdiction over post roads, and so forth. We have gone now to a point covered by different statutes where, in my judgment, we have already trespassed upon the principle which is announced in the first amendment to the Constitution, because we have established what is in its practical working a censorship. We have already legislated or passed laws which are wholly in contravention to the rights of free speech and a free press. We are day by day going farther.

These laws enable the Postmaster General, if he sees fit to do so, to practically direct the tone and the trend of any paper that may come under his surveillance. The latitudinous discretion which is given to him under these measures necessarily results in the utilization of this power in a way which can not be justified under a government of law. It becomes a government of persons, of individuals.

If you give an open public hearing upon the question of punishment, as we do in the courts, even though the law does seem severe or drastic, it will cure itself. Publicity in the courts will take care of it, and those who ought to be punished will be punished; not very many who ought to be punished will go unpunished. It is a different proposition when you are constantly giving to the head of a department the power to supervise matters, from which supervision there is no appeal.

I read in this connection a single paragraph from *ex parte Jackson*, the case upon which they all rely for the power to exclude to any extent Congress may see fit any material from the mail:

Great reliance is placed by the petitioner upon these views, coming, as they did in many instances, from men alike distinguished as jurists and statesmen—

Having reference to a report which was filed by John C. Calhoun—

but it is evident that they were founded upon the assumption that it was competent for Congress to prohibit the transportation of newspapers and pamphlets over postal routes in any other way than by mail; and, of course, it would follow that if with such a prohibition the transportation in the mail could also be forbidden, the circulation of the documents would be destroyed and a fatal blow given to the freedom of the press.

In other words, they say if you exclude them from the mails and also exclude matter from being carried by the express companies, and so forth, that you have then gone to such an extent as to be within the inhibition of the amendment to the Constitution.

But we do not think that Congress possesses the power to prevent the transportation in other ways, as merchandise, of matter which it excludes from the mails. To give efficiency to its regulations and prevent rival postal systems, it may perhaps prohibit the carriage by others for hire, over postal routes, of articles which legitimately constitute mail matter.

The court seems to intimate, although it does not expressly decide, that there is a limit upon the exclusion of mail matter from the mails, even under the provision of the Constitution which gives the Congress jurisdiction of post offices and post roads. The court held in this case that as the material excluded from the mails could be sent by express or freight, it was not an interference with the freedom of the press.

I venture to say that some of these days the court must revise its opinion upon this question, for the reason that if matter is excluded from the mails and reliance can only be had by the publisher to reach his readers through express or freight facilities, the press is controlled just as effectually as it can be controlled in any other way. The man who is not permitted to utilize the machinery of modern inventions for the purpose of conducting his business is out of the line of doing business with his competitor who may use them. To say that you may exclude his matter from the mails but that you can not prevent him from carrying it by freight and that thereby he has his right under the Constitution, is, in my judgment, an unsound position, for if you are a publisher and you are excluded from the mail and compelled to go by freight and I am permitted to send my matter by mail, your publication is destroyed. If jurisdiction is given to the Postmaster General of these subjects in this way, he may, in order that the party may get back into the mails, cover the entire tone and drift and subject matter of the publication. I am one of those who believe that under the first amendment to the Constitution Congress can not take a single step which will in any way directly or indirectly permit the censorship of the press.

Mr. President, a word on another matter. The Senator says—and correctly, as I had supposed until a few days ago—that all the reforms in this country which are effectuated through the ballot box and in a peaceful way are permissible under the Constitution; that if a body of men desire to change this Government from a representative government to a socialistic government or to a soviet government they have a right to do so, if they do it in a peaceful way and by manifesting their wishes and desires through the ballot box. It has been the contention of men, among others myself, who believe in orderly government, that there is no justification in this country for any man resorting to violence, that there is no justification for any man resorting to lawlessness, for the reason that the Government affords a method by which men may effectuate their desires in a peaceful way, and that is through the ballot box. But, Mr. President, a few days ago one of the most remarkable things, I think, in the history of American politics took place in the Legislature of New York, where five men were excluded from taking the oath. I read the reason assigned for that act. They were called before the speaker's chair, without any previous charge or any previous notification of incapacity to serve as legislators of that State, and were advised as follows:

You are seeking seats in this body. You have been elected on a platform that is absolutely inimical to the interests of the State of New York and of the United States.

If these men had not been legally elected, if there was fraud connected with their elections, or if they were ineligible by reason of any law found in the statutes or the constitution of New York, if there were any specific charges, they were entitled to have a statement covering these matters. In justice to the men who stood ready to take the oath of office, in deference to the dignity and honor of the great State of New York, and above all, as a matter of orderly and legal procedure, if there were charges of a specific nature they should have been stated. We are led to conclude that there were no such charges, for if there had been certainly no thinking man would have put himself in an indefensible position by saying, "You have been elected on a platform that is absolutely inimical to the State of New York and the United States." They were proscribed and made to stand aside by a majority because of their political and economic views. Their platform did not suit the majority. Their right to take the oath in a body to which they had been elected by the people was denied not because the people who elected them thought their views inimical to the State of New York, but because the majority of the representative body thought so.

Mr. President, the Republicans could exclude every Democrat, and Democrats could exclude every Republican at every opening of Congress upon any such proposition if the Vice President should call before him a man who had been elected and say to him, "Your views are inimical to what I consider the best interests of the United States and the State from which you come." The Vice President would have just as much right to say that to a Senator presenting himself to take the oath as the speaker of the Legislature of New York had the right to say it to those Socialists. If you deny men the right to effectuate their purposes and their plans through the ballot box, you invite them to violence and lawlessness.

Mr. THOMAS. Do you not also force them to resort to violence as an alternative?

Mr. BORAH. Yes; there is no alternative unless we are to become intellectual slaves.

Mr. STERLING. I desire to say in this connection that the action of the Legislature of the State of New York in excluding the so-called Socialists does not meet with my approval at all. I do not indorse any such proposition as that.

Mr. BORAH. No; and I do not see how it could meet with the approval of any man who has any regard for law and order, for the most lawless man is the man who having taken an oath to support the laws and the Constitution of the country violates them. Ignorant men, men of limited opportunities, denied much because of adversities in life, engaged in a struggle for existence, may with some excuse entertain the idea of lawlessness and of taking the law into their own hands. Every man must find some compassion for the man from that station of life who is misled into such false theories; but there should be no pity and no sympathy, there should be nothing but the severest condemnation, for men who have risen to the position of responsibility and then take the law into their own hands.

The further statement made by the speaker of the New York Legislature to these men upon examination leaves little doubt that these men were made to stand aside solely because of their political and economic views or at most because of their adherence to organizations which teach and urge socialism. It is a thoughtless and an ill-considered move which would attempt to establish any such precedent in this country because it can not but work tremendous evil. It should be rejected promptly and conclusively. Any such principles would Mexicanize this Government. It would do worse if possible; it would destroy the Government in all its fundamental worth. Only the strange and accursed fruits of war psychology could ever lead thinking men or just and thoughtful men so far from the true principles of representative government.

That proposition has two principles, or so-called principles, upon which it stands: First, upon the ipse dixit of the speaker and those who supported him, the men are called forward for judgment before any charges are made against them or any reason assigned to the men themselves; secondly, they are excluded from the privileges and rights of the assembly to which they have been elected until men shall judge whether or not they are qualified. Not a single objection known to the constitution of the State of New York is stated; not a single incapacity to serve as a legislator is alleged, but the political opinions of the men who stood there were adverse to those of the majority, and the majority excluded them. In my humble judgment such action forces lawlessness and revolution in this country.

Mr. WALSH of Montana. Mr. President—

Mr. BORAH. I yield.

Mr. WALSH of Montana. May I inquire of the Senator from Idaho whether he does not think that something of the same spirit is evinced in the resolution passed by the Senate some time ago providing for an inquiry as to whether or not Socialists were employed by the Federal Trade Commission?

Mr. BORAH. I expressed myself about that at the time.

Now, Mr. President, I wish to call attention to an incident in English history which may be instructive. In the year 1763 one John W. Wilkes was the owner of a newspaper known as the North Briton in England. Through his newspaper columns he made an attack upon Lord Bute, the King's minister. On April 23, 1763, he assailed the King's message to Parliament. Thereupon Lord Halifax, leading secretary of state, issued a general warrant "to search for authors, printers, and publishers." Wilkes was arrested and thrown into the Tower. A week later he was released by the court on account of his privilege as a member of Parliament.

Lord North moved that No. 45—which was the issue of the North Briton complained of—was a false, scandalous, and seditious article, and practically everybody voted for the motion. No. 45 was publicly burned, as if you could burn up truth, if it be truth; and it was in this instance.

Mr. SHEPPARD. Will the Senator quote the particular date again?

Mr. BORAH. This occurred in 1763.

Wilkes, thereupon, on January 19, 1764, was expelled from the House of Commons. He was also convicted in the court. As he was absent in Paris, recuperating from a wound received in a duel, he could not be sentenced, and was therefore declared an outlaw.

He returned to London in 1768 and asked for a pardon, which was denied. He ran for Parliament, and was defeated. He again ran in the county of Middlesex, and was elected. About this time he was sentenced under the old conviction to imprisonment for 22 months. He was again expelled from Parliament February 3, 1769. The voters of Middlesex promptly reelected him. Parliament declared the election void. He was again reelected and again rejected. In the fourth election Col. Luttrell ran against him, receiving 296 votes to 1,143 received by Wilkes. The House declared Luttrell duly elected. Then a storm of public indignation broke throughout England and the

cry became "Wilkes and liberty," inspired by the denial of the right of the people to select their own representatives.

His prison cell was thronged daily by people from all parts of the Kingdom.

In 1769 he was elected alderman for London; in 1771 he was elected sheriff of London; in 1774 he was elected Lord Mayor of London. He sat in Parliament from 1774 to 1790. In 1782 he had expunged from the record of Parliament all the declarations which Parliament had made against him.

That was accomplished in 1763 and the years immediately following under rather adverse circumstances, so far as the people were concerned, because they had very few rights at that time. I advise those who think they can deny the most essential rights of the people—and the right to choose their representatives is one of those—to reflect upon this page of English history.

Mr. President, it is the most dangerous thing imaginable to fly in the face of the fundamental principles of representative government and to exclude men from representation in legislative bodies because of political opinion. Aside from the legal question involved, think of the utter unwisdom of it. Here are five Socialists in a body of 150 or perhaps 200 members, and they are excluded from that body—upon what possible theory I do not know, except that their views would be dangerous. Well, that does not dispose of their views. You can not thus be rid of their opinions. You can not destroy socialism in that way. You must meet its arguments before the electorate. If you are defeated, they have the right to sit in places of power and to legislate.

Mr. President, I am not a believer in socialism as I understand socialism. I think if it were adopted in this country those who are now urging it would be as quick to regret it as those who are now opposing it. I do not believe that socialism can be made a success either from the standpoint of material progress or from the standpoint of moral and intellectual progress. But that has nothing to do whatever with the question which I am now debating. There is no way by which we can more effectually augment and spread the doctrine of socialism or sovietism than to admit by word and act that our own system of Government has broken down and that we are willing to trample upon the most fundamental rights of representative government in order to try to shield ourselves from the onrushing tide of socialism. There is only one way to meet socialism, if it can be met at all, and that is to demonstrate that this blessed old Republic without sacrifice of its fundamental principles is sufficient to meet every emergency in social progress, and to deal effectively with every crisis in industrial affairs, and to provide effectively and successfully for the progress and the happiness and advancement of the human family. I am one of those who believe that we can keep the Constitution and its guaranties, observe all its pledges in all their integrity, deny no man or class of men the rights and privileges which it provides for, and yet endanger not at all the safety or security and the stability of American civilization. The theory that there are times when provisions of the Constitution are suspended, either in peace or war, is a perfectly fallacious and vicious theory. The theory that you must do away with the guaranties of the Constitution in order to save the Constitution is not only folly but when put in practice is a conspiracy against our entire form of government. There is no occasion, in my opinion, for this utter distrust, apparently, of the well-established, thoroughly tested and tried principles of representative government. This appeal to force, to arbitrary power, to oppression, will work no benefit to the American people. It will in the end prove rather an unmitigated curse to the American people.

Mr. THOMAS. Mr. President, I am very glad that the Senator from Idaho [Mr. BORAH] anticipated me in my purpose of referring to the incident recently occurring in the New York Legislature. He has expressed his opinion, not only of the act but of the consequences inevitably flowing from it, so much more conclusively and eloquently than I could possibly hope to do that I am almost tempted to leave the subject with the mere expression of my cordial approval.

The incident, so far as I have observed, has not received the commendation of any respectable journal assuming to know all the facts. On the other hand, it has been properly criticized and condemned by the majority of them. I have had occasion once or twice to criticize what is called the nonpartisan movement, the Non-Partisan League of North Dakota. A social revolution is in progress in that State, the outcome of which no man can foresee; but I have taken especial pains to emphasize the fact that the movement, from its inception to the present time, has been conducted under the forms of law. No constitutional or

other lawful provision has been violated, so far as I know, either in the inception or in the progress up to this time of the purpose of the organization. I think it is doomed to defeat. I think it is a peaceful revolution. I think its purpose and its methods are inimical to representative government; but so long as the majority of the people of North Dakota through the legal forms of political expression have sanctioned the movement, just so long does it represent the sentiment of those people, and must be tolerated and treated accordingly. It is thereby in grateful contrast to the wild and irresponsible turbulence of I. W. W.ism and kindred movements.

I have denounced, and I shall continue to denounce as long as I am a Member of this body, all forms of violence, all appeals to violence, to bloodshed and riotous revolution, either to menace or to overthrow the institutions of this Government, but if men like the Socialist representatives of the city of New York lawfully nominated, elected, and certified as the representatives of their particular constituencies, are to be denied the right of representation and the right to their seats in the legislative bodies of the general assembly, not because of any challenge of the legality of their election, not because of any contest, either actual or threatened, but simply because they are the exponents of a public policy which is obnoxious to the majority, then those men and their constituents are necessarily driven to a resort to unlawful and revolutionary methods for enforcement of the convictions which they entertain.

While I share, and share fully, the views of the Senator from Idaho regarding socialism, I am yet generous enough to concede to the great body of the members of that faith the same sincerity of conviction which I claim for myself. They may be, and I think they are, deluded, but they have a right to be under our institutions, and to express and if possible to give effectual force to their delusions, if by peaceful and lawful methods they can convince a majority of the people that they are not delusions; and none of us—certainly none who have reached my time of life—feel like asserting any infallibility, either in the entertainment or in the expression of political or other convictions.

I trust that the common sense and through that the aroused public opinion of the great Empire State of New York will operate and operate very soon to reverse the action of the majority of the general assembly, and that they will perceive not only the wisdom but the essential policy of recognizing these men as the duly elected representatives of their constituencies and giving them the places to which they have been lawfully chosen. I might say the same regarding another election, the results of which will soon come before the body at the other end of the Capitol, but that, perhaps, might be an unwarranted assumption upon my part, and I shall therefore forbear any comments upon that situation, although I have very decided convictions about it.

Mr. President, I shall support this bill with much reluctance. I do not want to vote for section 3 at all. I know that it is necessary that some action should be taken, particularly in view of the official opinion of the Attorney General of the United States, whereby his hands can be strengthened in his efforts to deal properly with those who are menacing the life and well-being of the Nation by resorting to criminal and unlawful processes. But it is an extremely difficult thing by legislative enactment so to restrict the use of the mails as to accomplish the desired object and at the same time prevent the abuse of the processes which we enact into law. The difference, in other words, between what is and what is not a physical menace to the institutions of the country is something which no man can define and something into the definition of which the opinions and the prejudices of those who are supposed to enforce the law must largely enter. I greatly fear that a law of this kind can be enacted and escape abuses in administration.

I refer to section 3, and I do not know but that some of the provisions of section 2 in their practical administration will develop the same conditions. I do not know to what extent the mails are being improperly used. I do know that they are being so used to a very large degree. I wish it were possible for the Congress by specific legislation to declare what shall and what shall not be given entry into the mails, and thereby do away with that discretion which necessarily accompanies the enactment of such legislation and its subsequent enforcement. In view of the amendment offered by the Senator from Idaho which has been accepted, I shall give the Government the benefit of the doubt; but I do it with much reluctance, because of my fear and apprehension as to its administration.

I felt the same way regarding the espionage act. The Senator from Nebraska [Mr. Norris] has called attention to specific instances arising during the war in which the funda-

mental rights of the citizen have been interfered with, most oppressively, and in most instances without any justification.

In times of war that is perhaps to be expected. It certainly is unavoidable in many instances. But while we are technically in a state of war now, we are actually in a state of peace, and consequently there should be no need for those more drastic provisions which at that time were supposed to be essential for the protection of the Republic.

I am satisfied, Mr. President, that this legislation will not prove as efficacious as a great many seem to think, although I hope that it may. It is impossible, in a country like ours, to entirely suppress extremes of opinion, or to prevent those occasional volcanic outbursts which are the offspring of discontent, sometimes real and sometimes assumed. I believe that in the forum of full and unimpaired discussion, the education of the people, so to speak, by those who are capable of educating them, is the essential and may be the ultimate and final salvation of the Republic; for just so long as men appeal to the baser instincts of humanity, just so long as the disparity between the very rich and the very poor is widely apparent, and particularly where the rich, as now, are constantly flaunting their wealth in the faces of discontent and poverty, just so long, Mr. President, will a spirit, whether we call it bolshevism or something else, manifest itself, find expression, and win converts, and until we recognize that fact and meet it, as the great middle class of this country must meet it sooner or later by recognizing its causes and removing them, just so long will legislation like this prove to be palliative and nothing more.

We are deporting aliens who, while they enjoy the blessings and the benefits of American freedom, have lifted their hands and voices against the Government; and I am heartily in favor of deporting them. No man who has not availed himself of the privileges of citizenship here, but who takes advantage of his presence to preach violence and destruction, should be permitted to stay within the jurisdiction of the United States one moment longer than it is necessary to apprehend and to remove him, to send him back to the country of his origin.

But that will not prevent their coming. I have here a very significant cartoon from a paper in my State, the Denver Post, entitled "Ships That Pass in the Night," the design showing one ship going in one direction filled with deportations, another passing in the other direction, labeled "Foreign Immigration to the United States." We can place limitations upon that condition if we will, but it is there, and until the spirit of the people and their apprehensions are aroused to the same degree and to the same extent that the enthusiasm of the Bolsheviks manifests itself, just so long will it remain, if it does not expand.

Apprehension has been expressed here regarding the circulation of revolutionary literature among the negroes in the South. That is deplorable; I hope it will be prevented. But, Mr. President, the best way for the country to rid itself of the menace of negro discontent, if it is one, is to extend to the negro full rights and protection under the law. We compel the negro to pay his taxes, we conscript him in our armies, we compel him to obey our laws, but in practice we are prone in too many instances to deprive him of the right to appeal to those laws for his protection when accused of offenses, whether heinous or trivial. You can not expect a great body of people, I do not care who they are, to be loyal to institutions of the benefits of which they are largely deprived.

This evil is not wholly confined to the Southern States. Unfortunately lynch law is contagious, and the victims of it, found hitherto in one section of the country, are found in these days wherever the two races conflict. I am no advocate of race equality, but I am profoundly convinced that law and order are the offspring of that affection for the institutions of one's country which springs from the conviction that they protect as vigorously as they punish. The man who violates the law in this country, black or white, Jew or Gentile, is entitled to every constitutional guaranty which culminates in a trial in courts of competent jurisdiction and before a jury of his peers. Every man who is required to give allegiance to the Nation and obedience to the laws is entitled to demand that the Nation shall protect him in the enjoyment of every right and the protection of every safeguard designed for the welfare of the citizen.

Such a policy, Mr. President, attended by that spirit of toleration which goes with sympathy and enlightenment, and with a recognition of the right of others to his own convictions, even in these perilous and exciting times, will, in my judgment, do much to heal the diseases of the body politic, and much more than any drastic legislation that we can enact. Indeed, such a policy responds to every impulse of enlightened selfishness.

This law will be measurably effective, I hope. But I shall be greatly surprised if it is not supplemented by appeals for some-

thing still more drastic before this Congress shall have expired and passed into history. I hope not.

I shall not detain the Senate longer, Mr. President. I suppose the Senator having charge of the bill would like to obtain a vote to-day. But I shall ask permission, before taking my seat, as indicating some of the things that are transpiring in the country and out of it, to insert in the RECORD a communication to the New York Times of the 24th of December last, from the pen of Walter Duranty. The communication consists very largely of the reproduction of a document which was found in the soles of the boots of a Russian sailor seized at Riga while attempting to make his way to the United States.

There being no objection, the matter referred to was ordered to be inserted in the RECORD, as follows:

WIDE PLOT OF REDS TO SPREAD CHAOS IN THIS COUNTRY—LETTER FOUND ON RUSSIAN COURIER BOUND HERE PROPOSED TO DISORGANIZE LABOR—ALSO TO DISCREDIT WILSON—AGITATION AGAINST LEAGUE OF NATIONS, CONGRESS, AND CAPITALISTS SUGGESTED—WORKERS MUST BE ARMED—COMMUNIST PARTY TO BE ORGANIZED FROM EXTREMISTS AND CONTROLLED FROM MOSCOW.

[By Walter Duranty.]

RIGA, December 24.

Here is a copy of the document mentioned in my previous dispatch, which, together with valuable jewels and large sums of money, was found in the soles of the boots of a Russian sailor seized here while trying to make his way to the United States. The prisoner's name and the name and address of the person in America for whom the document and funds were intended I have communicated to the proper quarter.

The document is signed jointly by Buharin, chief of the executive committee, Bureau of the Communist Internationale, and by Bersin, alias Winter, a well-known Bolshevik of Lettish origin. More than any argument, it proves what are the real aims of the red leaders and what their protestations of peace are worth. It begins:

"Dear Comrades: Permit us to give you a full résumé of our advice and instructions regarding current work in America.

"1. We firmly believe that after the expulsion of a number of sections of certain nationalities from the American Socialist Party the time has come to organize in the United States a communist party, which will proceed to get officially in touch with the Communist Internationale.

"We firmly believe also that this party could be organized from, firstly, the Socialist Propaganda League; secondly, the extreme—and now excluded—elements of the American Socialist Party; thirdly, the extreme elements of the Socialist Labor Party, which, as we are well aware, it is most important to split, as its actions are contrary to our aims; and, fourthly, the International Workers of the World, whose principle of nonpolitical action will disappear as it comes to recognize the dictatorship of the proletariat and soviet rule. The organization of this party should be effected in Moscow.

TO WORK ON SOLDIERS AND SAILORS.

"2. We firmly believe that one of the most important aims at present is the organization of communist small nucleus centers among soldiers and sailors as a fighting section to carry on energetic propaganda in organizing soviets of soldiers and sailors and in preaching fanatical 'hostility' (the Russian word means literally persecution) toward officers and generals.

"3. Such organizations of workmen soviets as already exist should not be allowed to degenerate into philanthropic or cultural associations. We are much afraid that in America there is just this danger. Therefore we strongly emphasize that until the soviets have got the upper hand they must regard themselves as militant (the word is underlined) units of the fight for national control and proletarian dictatorship. There must not be an inch yielded from this standpoint. [All the last sentence is underlined in the original.]

"The organization of strikes and of unemployed and the fomenting of insurrections; that is the task appointed. Secondly, it is necessary to take the utmost precautions against the splitting up of the proletariat among the already existing national political parties. Therefore direct your energies along the lines of developing the movement to establish soviets of workers of different political views.

"The general platform will be as follows:

"(a) Down with the Senate and Congress.

"(b) Down with capitalists in the factories. Long live the management of the factories by the workers.

"(c) Down with speculators. All organizations of food and supply to be in the workers' hands.

"Everywhere it is necessary sharply to emphasize the idea of seizing the whole machinery of economic administration by the working class, and to direct toward this object propaganda and agitation—by an outcry against the high cost of living.

HOSTILITY TO WILSON AND LEAGUE.

"It is desirable to spread hostility (again the Russian word persecution) toward Wilson as a two-faced criminal as well as toward his League of Nations.

"Regarding intervention, you already know what to do, but we ask you to stress the factor of our economic strangulation—and not only ours but Hungary's previously—and also to rub in the fact that western democrats are acting as our executioners.

"5. It is of supreme importance to pay the closest attention to the American Federation of Labor. This must be smashed in pieces (last three words are underlined) by active work in collaboration with the International Workers of the World to bring about strike movements and revolution.

"6. It is most necessary to develop propaganda to install into the minds of the workers the paramount necessity for arming (this word is underlined). Revolutionary soldiers who are demobilized should not give up their rifles.

"As a more general platform:

"(a) An international socialist republic.

"(b) Frighten everyone with the bogey of new wars being prepared by the capitalists.

"(c) Use the utmost efforts to oppose the organization of White Guards. This should be done in most ruthless and violent manner.

"7. Work for the centralization and combination of your endeavors. Don't give them any opportunity to smash you separately. Organize conspirative committees.

"With communistic greetings.

(Signed) "Bureau of the Executive Committee of the Communist Internationale.

"BUHARING and J. BERSIN, alias WINTER."

This document is presented as translated literally from the Russian original with the double check of one allied citizen familiar with Russian and one English-speaking native, besides myself.

RED ACTIVITIES IN OTHER LANDS.

Further documents seized from bolshevist conspirators here prove the existence of nefarious red activities in other countries besides Latvia and America. The names and addresses of English agents and "comrades" are certainly included, and, it is said, of agents and "comrades" in Scandinavia and Holland, though this I can not yet affirm positively.

A citizen of an allied country who has just interrogated the Russian sailor caught bearing the quoted document to the United States said to-day that this courier was an intelligent-looking fellow about 32 years old who made no bones about admitting that he was a communist, but cleverly evaded leading questions.

It is known that during the last 10 years he had worked on ships that put in at American ports, but up to the present he professes ignorance of the English language. Recently he has written articles for bolshevist sheets here and in Russia which are said to reveal no small degree of education and brain power. My informant got the impression that he was no mere tool, but a clever and dangerous man from whom it will be hard to extract much information other than that already known. This, however, is great, as his interesting documents are many.

Although the news of the arrest of the conspirators is not yet made public here, the effect undoubtedly is being felt, as public sentiment is much less uneasy. The people are also reassured by a timely statement from the Lettish commander, Col. Ballo, regarding the stability of the anti-bolshevist front and the impossibility of the reds breaking through.

The street car strike is not yet settled, but now that the dangerous element behind it has been eliminated, there is much less cause for anxiety. I talked to-day with one of the strikers through a Lettish officer. This man said he had been employed for 15 years, had a wife and three children to support, had no political bias, communist, socialist, or otherwise, but agreed to strike because he found it impossible to live on 175 Czar rubles—about \$3 American at present exchange—per month.

As prices run here in rubles, he was unquestionably right, and it must be said that the strikers' demands seem wholly justified. But that is one of the cleverest features of bolshevist action. It always begins with a strike that seems wholly reasonable, with the double object of enlisting public sympathy at the outset and of later inflaming the strikers' minds and bringing about other "sympathetic" strikes, if their just demands are not promptly granted.

It is the good German strategic policy of driving first at the weakest point. Several passages in the document seized on the sailor show that this is the case, and further establish the truth of the assertion made to me in Copenhagen by Danish Minister Scavenus that the reds aim always at disrupting existing labor organizations and destroying the influence of their leaders so as to be able to conduct the mass of workers along their own lines.

It is possible that the Moscow authorities and their sympathizers in America may question the authenticity of this document or attempt to disavow the conspirators here. It can be stated that papers, admissions of prisoners, and details of the whole organization leave not the slightest doubt on the subject in the minds of those best fitted to judge.

Mr. WALSH of Montana. Mr. President, I desire to say a further word before a vote is taken on the pending measure.

The Senator from Idaho [Mr. BORAH] called our attention this morning to the interesting story of the prosecution of John Wilkes. I am glad he did so. It can not be referred to, perhaps, too often, and it is commendable in any Senator to seize any opportunity again to relate the story, for out of that prosecution, and the prosecution of Thomas Paine, also referred to by the Senator from Idaho in discussing the pending bill the other day, grew the guaranty of the freedom of speech and of the press in the Constitution of the United States and the constitutions of the States. Although the principles were recognized to some extent in the English law prior to that time, they took form and substance and took possession of the minds of the people of this country through those prosecutions.

But, Mr. President, lest some idea might be gathered from the remarks of the Senator from Idaho that anything in the prosecution of Thomas Paine militates against the measure before us, I want to put in the RECORD the indictment upon which Thomas Paine was brought to trial. It reads as follows:

Thomas Paine, late of London, gentleman, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said sovereign lord, the now King, and to the happy constitution and government of this kingdom * * * and to bring them into hatred and contempt, on the 16th day of February, in the thirty-second year of the reign of our said present sovereign lord the King, with force and arms at London aforesaid, to wit, in the Parish of St. Mary le Bone, in the ward of Cheap, he, the said Thomas, wickedly, maliciously, and seditiously did write and publish, and caused to be written and published, a certain false, scandalous, malicious, and seditious libel of and concerning the said late happy Revolution and the said settlements and limitations of the crown and regal governments of the said kingdoms and dominions * * * intitled, "Rights of Man, Part the Second, Combining Principle and Practice." * * * In one part thereof, according to the tenor and effect following, that is to say, "All hereditary government is in its nature tyranny. An heritable crown"—meaning, amongst others, the crown of this kingdom—"or an heritable throne"—meaning the throne of this kingdom—"or by what other fanciful name

such things may be called, have no other significant explanation than that mankind are heritable property. To inherit a government is to inherit the people, as if they were flocks and herds." "The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick for men"—meaning the said King William the Third and King George the First—"at the expense of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing, indeed, and materials fit for all the purposes may be found in every town and village in England." In contempt of our said lord the now King and his laws, to the evil example of all others in like case offending, and against the peace of our said lord the King, his crown and dignity. Whereupon the said attorney general of our said lord the King, who for our said lord the King in this behalf prosecuteth for our said lord the King, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him, the said Thomas Paine, in this behalf, to make him answer to our said lord the King, touching and concerning the premises aforesaid.

To this information the defendant hath appeared and pleaded not guilty, and thereupon issue is joined.

So, Mr. President, it will be observed that while Thomas Paine condemned the English system of government as absolutely absurd and unreasonable, and urged everybody to adopt some other system that was more consonant with common sense, he did not advocate the overthrow of the English Government by force or violence. If Thomas Paine were indicted under this bill, if it ever becomes a statute, the Senator from Idaho would have no difficulty whatever in having a demurrer to the indictment sustained. The facts recited in the indictment upon which he was brought to trial do not make a case coming under this class of legislation. I do not imagine for a moment that the Senator from Idaho intended to convey the idea that a prosecution under this bill, if it should become a law, would be analogous at all to the prosecution of Thomas Paine for seditious libel in advocating a change by constitutional means in the English system of government; but I was apprehensive that it might be conceived from what he said that it would be so. The lessons to be gathered from the prosecutions of John Wilkes and Thomas Paine by the English Government are many and salutary, but none of them militate in any way against the measure that is now before us.

Mr. BORAH. Mr. President, my reference to Thomas Paine was with reference to section 3. I ask unanimous consent to insert in the RECORD, without comment, a letter written by Thomas Paine on what constitutes the freedom of the press.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

Prior to what is in England called the revolution, which was in 1688, no work could be published in that country without first obtaining permission of an officer appointed by the Government for inspecting works intended for publication. The same was the case in France, except that in France there were 40 who were called censors, and in England there was but one, called imprimeur.

At the revolution the office of imprimeur was abolished, and as the works could then be published without first obtaining the permission of the Government officer the press was in consequence of that abolition said to be free, and it was from this circumstance that the term liberty of the press arose. The press, which is a tongue to the eye, was then put exactly in the case of the human tongue. A man does not ask liberty beforehand to say something he has a mind to say, but he becomes answerable afterwards for the atrocities he may utter.

Some lawyers in defending their clients (for the generality of lawyers, like Swiss soldiers, will fight on either side) have often given their opinion of what they defined the liberty of the press to be. One said it was this, another said it was that, and so on, according to the case they were pleading. Now, these men ought to have known that the term "liberty of the press" arose from a fact—the abolition of the office of imprimeur—and that opinion has nothing to do in the case. The term refers to the fact of printing, free from prior restraint, and not at all to the matter printed, whether good or bad. The public at large—or, in case of prosecution, a jury of the country—will be judges of the matter.

The PRESIDING OFFICER (Mr. ASHURST in the chair). The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which is House bill 3184.

Mr. NELSON. Mr. President, I ask unanimous consent that the unfinished business may be temporarily laid aside for the purpose of continuing the consideration of the sedition bill, and that the water-power bill shall not lose its place as the unfinished business.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senate continues the consideration of Senate bill 3317, and the pending question is on the amendment of the Senator from South Dakota [Mr. STELLING].

Mr. FRANCE. Mr. President, I desire to say a few words with reference to the measure before it passes, as it will. It has so little merit that it will pass. The Senators smile. It is a joke, a tragic joke, when our calendar is crowded with great bills which would have dealt with the serious problems of reconstruction which are upon us that such a measure as this should be consuming our time. If I did not feel unwilling to delay the Senate I would read the numbers and the titles of the bills which have been displaced, crowded into the background by this repressive and destructive legislation.

The great Americanization bill, which would seek to cure these evils not by repression but by the eradication of them, has been shoved into the background week after week and month after month, despite all of the efforts of the Senator from Iowa [Mr. KENYON], who has such a true insight into the causes of that discontent which has become a menace to our institutions.

I might mention a bill on the calendar which would provide hospital facilities for the poor drug addicts of the country, a bill which must be enacted before there can be any enforcement of the Harrison antidrug law or antinarcotic law, a law which can not be enforced and at the violation of which the officials of the Government are winking, because to enforce it would be to create a great host of maniacs—perhaps 500,000 of them altogether—men and women who practically would become maniacs if deprived of those drugs which under a notorious violation of the law they are now allowed to obtain and which they must obtain until hospital facilities are provided for their treatment and for their cure.

Prohibition legislation was enacted; and thus deprived of alcoholic stimulants many of those addicted to alcohol are turning to drugs, and under the lack of enforcement of the Harrison Act—a lack of enforcement which is necessary—these people are becoming drug addicts, because Congress has not had the time to pay attention to that problem.

I have mentioned the antinarcotic bill and the Americanization bill. There are many other bills of a like nature upon the calendar, constructive, corrective, rather than repressive in their nature.

On yesterday during the course of my remarks in opposition to this measure I referred to the fact that many labor organizations in all parts of the country had passed resolutions in condemnation of the legislation, because they consider that it may be used, as was the espionage act, by governmental officials to censor the press, to curtail, in violation of the Constitution the rights of free press, of free speech, and of free assemblage, rights so dear to every true American heart and so essential to the preservation of the liberties of all, and particularly of those, the very best of our citizens, who labor with their hands and live by the sweat of their brows.

I placed in the RECORD as part of my remarks several communications from local unions, members of the American Federation of Labor, which indicated, I think quite clearly, the attitude of organized labor which is so strongly opposed to all of these repressive statutes. I had many other communications of a similar nature upon the same subject, a few more of which I desire to read into the RECORD to-day in order that Members of the Senate, if they choose to read the RECORD, may be made fully aware of the fact that the legislation is considered—and I believe very properly considered—to be hostile to the interests and inimical to the rights of our working people. All the wisdom of the country, as I have said on a number of occasions, is not in the brains and in the minds of the members of legislative bodies.

To conserve the time of the Senate I will have some of these inserted in the RECORD, where they will not be read—not read, not heeded. Why, Mr. President, if they were to be read and heeded, there would be men here seriously considering the attitude of organized labor, the attitude of our working people, the attitude of the intelligent masses of Americans upon this most important piece of legislation. How many Senators are here paying any attention? They do not care. They have made up their minds to support the committee and to vote for the bill, and what organized labor has to say, what the masses of the American people have to say, makes no difference to them. You will find, probably, that the measure will pass not only without these letters having been read and heeded, but probably without even a roll call.

I will read a few of the letters, because they will not be read if they are all inserted in the RECORD. My duty in advising the Senate is done when I shall have read some of the letters and placed some of them in the RECORD and briefly expressed further my opinion of the proposed legislation.

These are but a few letters selected from many. From the International Association of Machinists, Lodge 105, Toledo, Ohio, is a letter addressed to me, stamped with the seal of the union, and reading as follows:

As American citizens we believe that free press, free speech, and the right to assemble are the foundations of our liberty and should not be curtailed, and that war-time measures restricting these liberties should not be made into the laws governing the people of a free Republic in time of peace, and we therefore appeal to your patriotism to use your influence and vote to defeat Senate bill 3317, introduced by Senator STELLING.

To conserve the time of the Senate, I will not read, but will ask to have inserted a letter from the Pennsylvania Federation of Labor, affiliated with the American Federation of Labor, of

Harrisburg, Pa.; also one from Local Union No. 598, Brotherhood of Carpenters of America, Wabash, Ind.

But I will read a rather long letter from Joint Council No. 9, United Shoe Workers of America, 2040 Northwest Avenue, Chicago, Ill., a letter which indicates the thoughtfulness and the intelligence of the members of the United Shoe Workers of America, a little more of which intelligence and earnestness I wish might be represented right here in the Senate Chamber and in the other branch of Congress when such measures as these are pending. It is long, but I shall read it. It is written by one of the men whose opinions are regarded so lightly at the present time during the pendency of this measure, for no one really has discussed the attitude of the masses of the people toward the legislation at any great length. The letter is addressed to me and reads as follows:

At regular meeting of above-named council, Friday, November 28, unanimous action was taken to offer strenuous protest through you against Senate bill 3317 and its companion bill in the House of Representatives, and our reasons for taking such action are based upon our knowledge and understanding of the autocratic, sinister forces and influences that are legislating for and seeking the adoption of such measures. Years of experience, much of which has proven sad and bitter experience, has convinced us that no matter how carefully our laws are worded or how reasonable or just they appear on the surface, they seldom, if ever, operate in the interest and advancement and uplift of the vast majority of people in the United States, who, more than any other, need just laws democratically administered in order that they may live and develop their lives, conduct, and characters in accordance with the principles and programs established by the courageous, worthy statesmen and others who first instituted a government in which the will of the majority was the essential fundamental feature. Especially is this true with regard to our laws dealing with commerce and industry, not because they express the hopes and designs of plutocracy in their wording, but because of the construction and interpretation which, in the far too numerous instances, is given them by our administrative forces, particularly our courts; and this twisting and construing laws to conform to the desires of the moneyed interests has for years been conducted in such a brazen and flagrant manner that every intelligent American to-day knows that in the vast majority of instances where the issue is the moneyed interests versus the rights of the majority of citizens, particularly organized working people, such issues are not decided by the merits of the case or by what would do the most good to the greatest number, but according to the will or at least favorable to said interests, and such practice has created a very pronounced and growing suspicion among the vast majority of the working people that our administrators, particularly our courts, are but servants of those interests and are not considerate of the common interests or welfare of the majority of the common people. This opinion is now national in its scope, and no legislator will deny that it has reached a degree of distrust and impatience such as to threaten those features of our institutions and principles of government that should at all times hold the confidence and respect of the vast majority of citizens. Too long have wage earners in this country suffered by having their rights, privileges, and conscientious protests outlawed by class interpretations of just such laws as the proposed Senate bill 3317, and hundreds of capable and honest Americans, who have the best interests of our country at heart, are now languishing in prison cells for the sole reason that the financial kings want them in prison and found it an easy matter to get one or a dozen of our supposedly impartial judges to send them there. The spirit and principle of Americanism has never been, nor never will be, killed by jailing courageous men and women, and the continued jailing of such characters will ultimately force a condition where an outraged majority may strike back with weapons other than the ballot, and we would consider it a sad reflection upon all of us, particularly our statesmen, if subsequent industrial laws and conditions force an outraged working class to strike blindly or illegally in an attempt to effect such changes as they believe to be necessary, but which should at all times be effected through the orderly, lawful processes embodied in our Constitution. We believe you will agree with us that Senate bill 3317 and its companion bill in the House of Representatives will, if adopted as law, work untold hardship on an already outraged working class and will prove a large contributing factor in fanning the flames of bitterness and resentment, which are already far too pronounced.

Mr. President, this man who works upon shoes, this operator of a shoe machine, knows what is in the Constitution of the United States; he knows what his rights are under the first amendment to the Constitution of the United States, which guarantees a free press, free speech, and the right of assembly, free from invasion by Congress, even though there may be learned lawyers, Senators, and Members of the House of Representatives who, with a fine legal ability, are able to argue that the first amendment to the Constitution does not mean what it says, and that, therefore, we may pass a law which is in plain contravention of it. Perhaps it would be better if we had a few shoemakers in the Senate or in the House of Representatives of the United States. Perhaps the Constitution would be in safer hands.

Senate bill 3317 and its companion bill in the House of Representatives will, if adopted as law, work untold hardship on an already discontented working class and will prove a large contributing factor in "fanning the flames of bitterness and resentment, which are already far too much pronounced."

That is the whole argument against this proposed statute. No man can successfully contend before the intelligent American people that we have no State or Federal statutes against direct incitation to the use of force or violence against persons or against the Government. We have such statutes; they are drastic statutes; and I cited them on yesterday. The point is that to enact this proposed statute at this time is to do exactly

what this intelligent member of the United Shoe Workers of America says: It is to "fan the flames of bitterness and resentment, already now far too pronounced."

Mr. President, I ask permission to insert some other letters from other locals of the labor unions. Such letters, I may say, are coming from all over the country.

The PRESIDING OFFICER (Mr. OVERMAN in the chair). Without objection, it is so ordered.

The letters referred to are as follows:

TOLEDO, OHIO, December 1, 1919.

Hon. JOSEPH I. FRANCE,

United States Senate.

DEAR SIR: As American citizens we believe the free press, free speech, and the right to assembly, the foundation of our liberty, should not be curtailed, and that war-time measures restricting these liberties should not be made into laws governing the people of a free Republic in time of peace, and we therefore appeal to your patriotism to use your influence and vote to defeat Senate bill No. 3317, introduced by Senator STERLING.

With best wishes for success in your efforts to preserve American liberties,

Respectfully, yours,

TOLEDO LODGE 105, INTERNATIONAL
ASSOCIATION OF MACHINISTS,
CHAS. BANK, Recording Secretary.

[SEAL.]

PENNSYLVANIA FEDERATION OF LABOR,
Harrisburg, Pa., November 19, 1919.

Hon. JOSEPH I. FRANCE,

United States Senate, Washington, D. C.

DEAR SIR: By order of a special convention of the Pennsylvania Federation of Labor, held in Pittsburgh recently, I forward to you a copy of a resolution there adopted:

Resolution No. 8, introduced by resolutions committee.

"Resolved, That the Pennsylvania Federation of Labor in convention assembled protests most emphatically against United States Senate bill No. 3317, introduced by Senator STERLING, which ostensibly aims to punish with heavy penalties any advocacy of a change of Government by violence or violent resistance to Government authority, but which may readily be construed, as was the espionage act, to apply to any vehement protest against existing conditions.

"The orderly forces of Pennsylvania labor realize the sinister menace of this bill to the American liberties of the working people: Therefore be it further

"Resolved, That we call upon the Congress of the United States to defeat this bill; and be it further

"Resolved, That copies of these resolutions be sent to Senators PENROSE, KNOX, FRANCE, McCORMICK, CAPPEL, LA FOLLETTE, GRONNA, and NORRIS."

Thanking you for giving it your fullest consideration, I am,

Very truly, yours,

C. F. QUINN, Secretary.

LOCAL UNION No. 598,
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,
Wabash, Ind., November 26, 1919.

Hon. JOSEPH I. FRANCE,

United States Senate, Washington, D. C.

DEAR SIR: At a regular meeting of Local Union No. 598, Carpenters and Joiners of America, November 21, 1919, a resolution was passed:

"Whereas a bill is now on the calendar of the United States Senate, No. 3317;

"Whereas we deem the laws now in force, National and State, are ample to suppress all persons who may attempt to overthrow the Government: Therefore be it

"Resolved, That we vigorously protest against any law that may be construed and used by the enemy of labor to suppress labor. The time has arrived when we have no more use for the laws in the United States to suppress labor than we have for the principles of bolshevism."

Yours, truly,

J. W. SCOTTEN,
Recording Secretary.

LOCAL UNION No. 275,
BROTHERHOOD OF PAINTERS, DECORATORS,
AND PAPERHANGERS OF AMERICA,
Chicago, November 28, 1919.

Hon. JOSEPH I. FRANCE,

United States Senate, Washington, D. C.

SIR: At the meeting of Local Union 275, November 18, I was instructed, by unanimous vote, to write to you in regard of the so-called "peace-time sedition law," known as Senate bill 3317.

Local Union 275 feels that this bill should be defeated, because it will serve only to restrict the lawful activities of organized labor, while it will not give more protection to the Government against agitators of violence.

Furthermore, the wording of the bill leaves it open for misconstruction, and makes it a dangerous weapon in the hands of officials who are to enforce the law.

Local Union 275 of the Brotherhood of Painters expects that you do everything in your power to defeat this bill.

Respectfully, yours,

ALBERT FRIEDLIER,
Recording Secretary.

INTERNATIONAL MOULDERS' UNION OF
NORTH AMERICA, No. 42,
Quakertown, Pa., November 29, 1919.

Hon. JOSEPH I. FRANCE,

DEAR SIR: Local No. 42 of the Iron Moulders' Union of North America kindly asks of you to do all in your power to prevent Senate bill 3317 and its companion bill in the House of Representatives from becoming a law. Thanking you in advance very much for this favor and hoping you will comply with it, I remain,

Yours, fraternally,

JOHN C. KOEHLER,
Corresponding Secretary,
141 Second Street, Quakertown, Pa.

Mr. FRANCE. Here is one which I shall read from Local Union 2880, United Mine Workers of America, Bonanza, Ark.:
Resolution of Local Union No. 2880, United Mine Workers of America—

It is worth while, Mr. President, to pay attention to the language used by these local unions of workers on shoes and workers in the mines. It might encourage some of those Senators who feel that the Great Republic is about to totter and fall to ruin because a few rattle-brained anarchists are publishing irrational literature, the very best argument against which is its own language and its own thought. As some one has already pointed out, one of our great metropolitan dailies not long ago, while this subject was being discussed, to show the utter folly of anarchistic doctrines and of anarchistic literature, published extracts from such literature. Of course the paper carrying such quotations from anarchistic literature would have been nonmailable under the pending bill. Furthermore, the very anarchistic literature it might be well to import into this country in order that our people might know the utter folly of it can not even be imported after this bill passes. My point is that the man who believes in the intelligence of the masses of our people is not apt to be frightened by such useless and futile agitation as that which is now being carried on. As I said yesterday, I am not frightened, because I have faith in the intelligence of the masses of our people; and those who have not such faith might do well to pay not only attention to the substance but to the language of the resolutions written by these miners and workers on shoes.

Resolution of Local Union No. 2880, United Mine Workers of America, Bonanza, Ark.

Resolved, That whereas Senate bill No. 3317 now before the United States Senate does not reflect the true sentiment of the common people; and

Whereas there is a widespread conviction throughout the country to-day that in some way the Government does not represent the American people, but does represent the special interests and all forms of corporate greed which has done so much, and is still doing so much, to undermine this Government, which of late years has been drifting toward despotism with such rapid strides; and
Whereas we are now governed by injunction, intimidation, and repression—

That is not bad language to be thought out in the depths of the mines, in the darkness and in the damp, with nothing but the glow of the miner's lamp to point the way, and with peril and death lurking in every corridor. It is not bad language to be thought out by men so preoccupied in the bowels of the earth. It might do credit to a Senator who has the time at his disposal, sitting in his comfortable office or in his upholstered chair here, to find phrases suiting the thought he wishes to convey—

Therefore be it

Resolved, That we demand the restoration of government by the people; we demand the freedom of speech and press as the best safeguards of any government, and we demand the repeal of every statute that prevents the free and fearless discussion of every question concerning governmental affairs—

That is not bad, I say, for the miners. They have to meet for their deliberations at night after the day's work is done, with tired brains and sore muscles, and with that physical fatigue which is not conducive to the framing of clear and eloquent language—

Resolved further, That we are determined to oppose by every lawful means within our power the enforcement of Senate bill No. 3317, or any bill of like character, because such legislation as this is inspired by the moneyed power, and is intended to rob us of our sovereign rights as American citizens to free speech, free press, and full and free discussions of all public questions, and places us at the mercy of the Federal courts who owe no allegiance to the American people—

I disagree with that. They owe an allegiance, and I believe that the Federal courts, in spite of all their shortcomings, in spite of what has seemed to me at times to be at least something of subserviency to a popular hysteria, have been, as a rule, the bulwark of our Constitution; and yet I do not criticize those who take the extreme other view.

They go on to say:

Who have always been responsive to the enemies of popular government, the autocrats of wealth; and be it further

Resolved, That we remind the Congress of the warning of Lincoln just before the Civil War.

These miners knew about Lincoln. The miners who drew these resolutions have not forgotten him.

Lincoln said: "The people of these United States are the rightful masters of both Congresses and courts; not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

I tell you, Mr. President, the American people have not forgotten that great doctrine; and I believe that the time is coming, sirs, when they are preparing to overthrow—and the sooner it comes the better it will suit me—the men who are perverting our Constitution.

They proceed:

What constitutes the bulwark of our own liberty and independence? It is not our frowning battlements, our bristling sea-coasts, our Army, and our Navy. These are not our reliance against tyranny. All of these may be turned against us without making us weaker for the struggle. Our reliance is in the love of liberty which God has planted in us. Our defense is in the spirit which prizes liberty as the heritage of all men, in all lands, everywhere.

Senators, do not tremble for a Republic bulwarked by miners—miners who, in the bowels of the earth, learn to write sentiments such as these, in language so eloquent and so full of appeal:

Destroy this spirit, and you have planted the seeds of despotism at your own doors. Familiarize yourselves with the chains of bondage, and you prepare your own limbs to wear them. Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you.

(Signed)

Ordered by Local Union 2887, United Mine Workers of America, Bonanza, Ark.

If the miners who wrote that resolution were sitting in the Senate of the United States, there can be no doubt as to how they would vote upon this bill and upon other similar vicious and unjustifiable measures.

These few letters were selected out of a large number which have been written to me both in opposition to this bill and in favor of the bill which I introduced in January of last year for the repeal of the espionage act—a bill which, although before the Judiciary Committee and its subcommittee for many months, I believe never received any serious consideration by that committee.

Out of consideration for the Senator who has charge of this bill, and out of respect for the Senate and the respect which I believe is due it, not only from its Members but from the people, because of the great functions which it was designed to perform, I shall forego any discussion of the methods which were employed by some of the members of the subcommittee having these various bills under consideration and charged with the duty of giving them all careful and impartial consideration. I do not mean dishonorable or unfair methods but methods which seemed to me to indicate that they were not fully and impartially considering the great issues raised by these various bills. I shall leave it to the judgment of the masses of our intelligent citizens whether the members of the subcommittee who have favorably reported this bill have carefully considered the legislation already upon our statute books making direct incitation to the use of force or violence against persons or against the Government a crime, whether they have considered the evidence of the past, as revealed by our early national history as to the effect which is to be expected and which is inevitable as a result of such repressive legislation, and whether they have weighed, considered, and sought to interpret more recent events which have occurred during the full operation and under the drastic administration of the espionage act.

It has been said that history repeats itself. That is true. The course of human events tends to move in circles and cycles, instead of ever forward and upward in the direction of orderly progress because of the blindness, stupidity, and intolerance of the old guard of Bourbons, who so constantly stand across the path resisting all advance.

I have come to the conclusion that Bourbonism and what we generally understand in common phrase as bolshevism are but different manifestations of the same disease, a disease the principal symptoms of which are stupidity and intolerance. Stupid, intolerant, senile, ivory-pated Bourbonism can strike its hand in a spirit of perfect fellowship upon the bloody palm of bolshevism. I mean bolshevism as it is ordinarily understood, bolshevism as it is reported and conceived in its worst aspects. Bourbonism and such bolshevism both practice tyranny, the tyranny of the majority over the minority, which respects no law and disregards personal rights. Both believe in the rule of force rather than in the rule of reason. Both dote upon reaction and revel in repression. Both would muzzle the press and silence discussion.

I have several times quoted a paragraph from Edmund Burke, to which my attention was first directed by the Senator from Idaho [Mr. BORAH], a Senator truly imbued with the spirit of our institutions, a champion and defender of them and of the rights of the people against all open and insidious assaults. Edmund Burke said:

It is right that there should be a clamor whenever there is an abuse. The fire bell at midnight disturbs your sleep, but it keeps you from being burned in your bed. The hue and cry alarms the country, but it preserves all the property of the province.

With all this your reactionary Bourbon disagrees, because he is either blind to or parasitically thrives upon abuses. He hates

free, fearless, and vigorous speech, because it disturbs and hurts him. He resists all change, defends existing conditions, and seeks to discredit or persecute those who demand reforms. He distrusts plans for universal education, because he has a secret contempt for the minds of the masses of mankind. Bourbonism is senilism. It is intolerant of contradiction and storms against change. It remembers fondly but misinterprets the past, resents and resists what is new in the present, and views the future with foreboding. The truly liberal and progressive man, on the contrary, defends free speech and universal education, because he has faith in the intelligence and truly trusts the motives of the masses of men. The liberal man knows that we need now, not repression, but a new and better expression for the spirit of social discontent and of revolt. Discontent can be destructive or divine. It can demolish what is or it can upbuild and enlarge it to be a nobler, vaster fane of human liberty. Energy can not be destroyed, it must be converted. We can not suppress all manifestations of that fire and heat which seem now to threaten to bring on a larger conflagration, but by the proper methods we can engage it and employ it as power to drive on the mighty engines of progress.

Ah, Mr. President, the fathers were wiser than ourselves, because they understood that there was a law of conservation for social energy, that efforts to dissipate or imprison it were dangerous, and that it was the duty of wise statesmanship to give it at once free expression and proper direction.

It is a deplorable fact that the Bourbonism which has been dominating our legislative procedure for the past many months has been too blind and stupid to profit by the mistakes of the past. Not all of the fathers were as wise as Washington, Hamilton, and Jefferson. There were amateurs in the art of statecraft in the legislative halls of the Nation in those early days who, filled with the pride of opinion, dared to disregard the counsels of these mighty men, whose wisdom must have been inspired. But our folly far exceeded theirs, for in 1917 and 1918 we not only had the words of Washington, Hamilton, and Jefferson to warn us, but we had the disastrous results which followed the less excusable mistake of those legislators who refused to heed their wisdom in that day.

Repudiating the doctrines of the fathers, disregarding the plainly written language of the Constitution, closing our eyes to the disastrous consequences of the alien and sedition laws of 1798, we passed the speech and press censorship clause of the espionage act and the act amendatory thereof, a far more drastic statute than the old alien and sedition law, and established a bureaucratic tyranny, which deprived the masses of our people of their liberties. Having sown the seed, you seem to be surprised at the harvest. As President Wilson said, in substance, not long since, repression is the seed of revolution. Certainly the Senate was forewarned, for I myself referred to the words of Hamilton, written when the alien and sedition laws of 1798 were pending, which words I have several times since quoted.

Let us not establish tyranny. Energy is a very different thing from violence. If we make no false step, we shall be essentially united, but if we push things to extremes, we shall then give to faction body and solidity.

That paragraph of Hamilton, spoken in 1798, might have warned us in 1918. But it did not warn the Congress of 1798, nor did it warn the men who, in their pride of opinion in 1918, thought that they knew more about the great principles upon which this Government was established than did Alexander Hamilton, who was the chief factor in the writing of that great-est of all governmental documents.

Oh, how richly his prophecy of 1798 was fulfilled. His warning was not heeded by the Congress, and body and solidity were given to faction.

I called attention in May, 1918, to the destructive and disintegrating effects produced by this statute against which he had warned. I called attention to the fact that it almost brought about a dissolution of the Republic, and that out of the discontent and deep sense of injustice which were created by that statute was born the doctrine of nullification and secession, which, growing through the years, at last led this Republic to civil war.

Mr. President, we might have known what was coming. How much revolutionary literature was there, how strong was the radical press, how menacing were the doctrines of anarchy before the enactment of the espionage act! All of this commotion, all of this promotion of those who are spreading the radical literature, all of this growth in lawlessness, have come about while that statute has been in force and while it has been drastically administered.

Of course that is all elementary. Hamilton, Jefferson, and Washington all knew the dangers of free speech. They all knew that liberty might at times become license; but they also knew the greater danger of repressing free discussion.

As the wise old commentator, Cooley, said:

Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people can not fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with the freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation the consolation must be that the evil likely to spring from lively discussion will probably be less and its correction by public sentiment more speedy than if the terrors of the law were brought to bear to prevent the discussion.

Mr. President, if I am mistaken, I am in good company, in the company because I chose it, not because I am fit to be in it because of any abilities which I possess; if I am mistaken, I am mistaken with Jefferson, I am mistaken with Washington, I am mistaken with Hamilton, and being mistaken with them I shall be content.

But, sirs, those men were not mistaken. You disregarded their words in May, 1918, and you enacted a statute which has brought about the very condition which you sought to avoid. Thus do Bourbonism and reaction always defeat their own end.

The remedy for the spirit of discontent and of revolt is not, I say, repression, but reform. If the Congress would now devote itself to the enactment of much-needed corrective and constructive legislation aimed to cure those unfavorable conditions which have been created, aggravated, or new discovered by the war, much of this discontent would disappear.

I am convinced that we need not more repressive but corrective legislation, and that if we restore to our people the liberties which they enjoyed prior to the war, while we move steadily on toward an improvement in social, industrial, and commercial conditions, that the serious unrest and discontent will speedily be dissipated. In the meanwhile I think I can assure the Senate, and, I believe, the American people can feel assured, that any direct incitation to force or violence against individuals or against the Government can without difficulty be taken care of by efficient departments of justice, both State and Federal, under the powerful criminal statutes which have been part of our State and Federal laws for many years.

Mr. President, when we enacted the amendment to the espionage law, in my humble judgment we violated the fundamental principles of our Constitution, and we went directly against the wise counsel of the men who founded, upon the principles of everlasting justice, this great Republic.

We may, sirs, enact this bill into law; we may seek to remove this discontent by repression instead of removing it by the correction of its causes; we may wander farther away from the great principles enunciated by our fathers upon which our Government rests; but as the great Senator from Idaho [Mr. BORAH] said in his magnificent speech upon the league of nations, we will come back, we will come back, come back at last, even though it be in sackcloth and ashes, to the faith of our fathers, to a reacceptance and a reaffirmation of those great principles of liberty upon which this Republic is founded, and which, so long as they be not disregarded by members of legislative bodies and by the courts, will be a guaranty that our institutions will live on, increasing in strength and in their beneficent usefulness, not only to the people of our own land but to the peoples of every clime and nation.

Mr. President, I am convinced that the members of the Judiciary Committee never called into their councils such men as those who have written the letters and resolutions which I have read. I do not believe that that committee or the subcommittee ever gave careful consideration to such resolutions as those written by the United Mine Workers of America and the United Shoe Workers of America and other men of like sound judgment. I do not believe that the Judiciary Committee ever called those men into council. I do not believe that they have ever seriously read and considered the petitions which must have come before them, and, if that be so, sirs, if those resolutions and petitions came before that committee and were not fairly considered, I deem it to be the duty of the chairman of that committee or the Senator in charge of the bill to withdraw the bill until the committee has had an opportunity to acquaint itself with the opinion of the masses of America upon the justice or injustice of the legislation which is being proposed.

Mr. President, in these remarks and in my words of yesterday, I have attempted to register my protest against this un-American and destructive legislation. Probably the bill will pass without even a roll call, and probably there will be no record vote. I therefore desire to announce that for myself I wish the RECORD to show, even if there be not a roll call, that I have registered my judgment against this vicious legislation.

THE PRESIDING OFFICER. The question is on the amendment offered by the Senator from South Dakota [Mr. STERLING].

Mr. FRANCE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The roll was called, and the following Senators answered to their names:

Beckham	Harrison	New	Smoot
Brandeggee	Henderson	Newberry	Spencer
Capper	Johnson, S. Dak.	Norris	Sterling
Dial	Jones, N. Mex.	Nugent	Sutherland
Dillingham	Kellogg	Overman	Thomas
Elkins	Kendrick	Page	Trammell
France	Kenyon	Phipps	Wadsworth
Frelinghuysen	King	Polindexter	Walsh, Mass.
Gerry	Kirby	Sheppard	Walsh, Mont.
Gronna	McCumber	Simmons	Williams
Hale	Moses	Smith, Md.	
Harris	Nelson	Smith, S. C.	

Mr. TRAMMELL. I desire to announce the unavoidable absence of my colleague [Mr. FLETCHER] on account of illness.

Mr. FRELINGHUYSEN. I wish to announce the unavoidable absence of my colleague [Mr. EDGE] on official business.

The PRESIDING OFFICER. Forty-six Senators have answered to their names. There is not a quorum present. The Clerk will call the roll of absentees.

The Assistant Secretary called the names of the absent Senators, and Mr. KEYES and Mr. UNDERWOOD answered to their names when called.

Mr. CURTIS, Mr. MCKELLAR, Mr. CHAMBERLAIN, and Mr. PITTMAN entered the Chamber and answered to their names.

Mr. CURTIS. I was requested to announce the absence of the Senator from New Mexico [Mr. FALL] on account of illness, the absence of the Senator from Washington [Mr. JONES] on account of illness in his family, of the Senator from Michigan [Mr. TOWNSEND] on account of the death of his wife, and of the Senator from Idaho [Mr. BORAH] on official business.

Mr. POMERENE, Mr. MCCORMICK, Mr. BALL, and Mr. BANKHEAD entered the Chamber and answered to their names.

Mr. GERRY. I have been requested to announce that the Senator from Arkansas [Mr. ROBINSON], the Senator from Delaware [Mr. WOLCOTT], the Senator from Virginia [Mr. SWANSON], and the Senator from Nebraska [Mr. HITCHCOCK] are absent on official business.

The PRESIDING OFFICER. Fifty-six Senators have answered to their names. There is a quorum present. The pending question is the amendment offered by the Senator from South Dakota [Mr. STERLING].

The amendment was agreed to.

Mr. STERLING. Mr. President, on behalf of the committee I offer the following amendment.

The PRESIDING OFFICER. The proposed amendment will be stated.

The ASSISTANT SECRETARY. On page 2, line 5, after the words "United States," insert:

Or the free performance by any of its officers, agents, or employees of his or their public duty or to attempt by force or violence to overthrow the Government of the United States or all government.

The amendment was agreed to.

Mr. STERLING. Mr. President, at the suggestion of the Senator from Ohio [Mr. POMERENE], who is not now present, I offer the following amendment.

The PRESIDING OFFICER. The proposed amendment will be stated.

The ASSISTANT SECRETARY. On page 1, line 9, after the words "United States," insert "or of any State or Territory of the United States."

Mr. WALSH of Montana. Mr. President, I question the advisability of inserting such an amendment as that in the bill. I entertain very grave doubt as to whether the Government of the United States has the constitutional power to prevent the advocacy of the overthrow of a State government in this way.

It is true that the United States guarantees to every State a republican form of government, but a State government might be overthrown and another republican form of government instituted in its stead. I suppose, probably, that a soviet government would be a republican form of government. We can not pass upon the particular kind of republican government which would be justifiable under the Constitution. If it is republican in form, the guaranty of the Constitution is met. I do not believe that there is any occasion for the introduction of an amendment of this character. The inhibited effort must be to overthrow the Government of the United States, not the government of the State of New York or of the State of Montana. I do not believe that there has been any occasion that calls for an amendment of this character, and I feel that it will be, in a measure, perilous to the bill.

Mr. BRANDEGEE. Mr. President, I ask that the amendment may again be read.

The PRESIDING OFFICER. The amendment will again be stated.

The ASSISTANT SECRETARY. On page 1, line 9, after the words "United States," on page 2 line 9, after the words "United States," and on page 2, line 17, after the words "United States" it is proposed to insert the words "or of any State or Territory of the United States."

The PRESIDING OFFICER. The question is on the amendment.

Mr. THOMAS. Mr. President, I merely wish to emphasize the comments of the Senator from Montana [Mr. WALSH] in so far as they are applicable to the word "State." I presume the inclusion of the Territorial governments would be a matter within the power of congressional legislation. So it seems to me there should be a separation of the two. I do not think we have any power to legislate with regard to the overthrow of the State governments. The governments of States, it is true, are governments within the territory of the United States, but they are independent and are supposedly capable of taking care of themselves. I presume that a bill for the purpose of preventing treason against the State governments would very readily be rejected as beyond our power, and this is something in the nature of such legislation. I therefore suggest the excision of the words "State or" and the inclusion of the word "Territory" in the amendment.

Mr. POMERENE. Mr. President, I regret that I have not fully heard what has been said by the Senator from Colorado against the proposed amendment.

Mr. THOMAS. If the Senator will allow me, the objection made by the Senator from Montana [Mr. WALSH] was that the amendment offered by the Senator from Ohio transcended our powers of legislation, in that it provided penalties for attempts to overthrow or for advocating the overthrow of State governments. My comment was in harmony with the suggestion of the Senator from Montana in so far as it applied to State governments. I thought Territories, however, should be included.

Mr. POMERENE. I very much regret that I am unable to agree with either of the learned Senators, so far as the constitutionality of the proposed amendment is concerned. It must be borne in mind that under the Federal Constitution we guarantee to the States a republican form of government. We are interested in keeping that pledge good.

Mr. THOMAS. Suppose that an attempt were made to overthrow the republican government that to-day prevails in the State of Colorado by the substitution of another sort of a republican form of government for it; so long as a republican form of government is there, there is no necessity for exercising the constitutional guaranty.

Mr. POMERENE. The amendment does not affect the change of government by orderly processes.

Mr. THOMAS. That is another proposition.

Mr. POMERENE. We realize that there is a plenary method both in the State constitutions and in the Federal Constitution for the amendment of those instruments; but if it is of sufficient importance to make it a penal offense to attempt to overthrow the Federal Government it seems to me that the same reasons will support the proposition that we ought to defend the State governments and prevent their overthrow as a part of our governmental fabric.

I am not very particular about it; but it does seem to me a little strange that we should say, in the first place, that we are going to penalize any effort by force to overthrow the Federal Government; that we are going to penalize the attempt to overthrow all government; but we lose sight of the State governments. I think we are just as much interested in the protection of the State governments as we are in the protection of the Federal Government, and I say that particularly in view of the fact that it is a duty incumbent upon the Federal Government to guarantee to the States a republican form of government. I do not think it is a matter of a great deal of importance, but I think it is simply completing what was in the minds of the framers of this bill. For that reason I submit the amendment.

The PRESIDING OFFICER. The question is on the adoption of the amendment.

Mr. THOMAS. Just a word. The term "all government," which appears more than once in the bill, is sufficiently broad in itself to include State governments. I do not think the reference to "all government" should be here. I question whether we should legislate for all the world upon a subject which may be of universal concern but which seems to me to be unnecessary for the protection of our own Government.

There is no question that disturbance of or interference by violence with State governments are matters of direct concern to the Government of the United States. So is treason; so is the attempt to overthrow the government of great cities like New York or Chicago; but until the State in which the city is located is impotent to enforce its own laws and to maintain its own sovereignty the guaranty of the Government of the United

States should not be invoked. I concede that it may be a matter of comparative unimportance, but I do not think that we should legislate upon a subject which might, by making the legislation too inclusive, result in its overthrow at the hands of the courts.

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator for just a moment?

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Oregon?

Mr. THOMAS. I do.

Mr. CHAMBERLAIN. I merely wish to ask the Senator a question in that connection. I do not understand that the words "or of all government" mean all governments. A man may go out on the street or may publish a seditious article without mentioning the United States or the Constitution of the United States and advocate the overthrow of all government.

Mr. THOMAS. I am glad the Senator has mentioned that, because I intended to have stated that the only basis upon which we can legislate regarding "all government" is that it will include our own.

Mr. BRANDEGEE. Mr. President, of course I sympathize with the idea which is sought to be incorporated in the bill—that is, the suppression of attempts to overthrow by force the Government of the United States. I assume that means the Government as it exists, and I assume that the words "or of all government" mean any kind of a government that the United States may have, and do not refer to the various forms of State, municipal, or Territorial government which may exist under the jurisdiction of this country.

If I thought that we had the constitutional authority to adopt the amendment, I should be very glad to vote for it. The question arises suddenly, and I have had no time to give it consideration, but, as it strikes me offhand, I do not think the Government has the constitutional authority to take jurisdiction of the case of an attempt to overthrow a State government by substituting one form of republican government for another. It does not seem to me that we would have authority to make an attempt to overthrow a city government or a town government or a village government a Federal crime. In the interest of law and order I should like to guarantee the maintenance of such orderly government as now exists by law or as may come into existence by the orderly processes provided for by our Constitution; but it seems to me that the burden of proof at least of showing that this proposed amendment comes within the constitutional authority of Congress is upon the proponents of the amendment. I do not think that the mere citation of the provision of the Constitution of the United States that the Federal Government guarantees to each State a republican form of government is sufficient to cover the instances raised by the Senator from Montana and the Senator from Colorado. It seems to me to be a very doubtful, dubious attempt to obtrude the criminal jurisdiction of the United States upon the various States and municipalities of the country.

While I am as much of a federalist and as much of a nationalist, I think, as there may be in the country, I am also a very strong adherent of the theory that we should preserve the rights that the States have reserved to themselves. The State authorities and their militia ordinarily are able to protect themselves in all sorts of local disturbances, riots, and insurrections. They may, through their general assemblies or their executive officials, call upon the Government of the United States for aid if they at any time find themselves unable to protect themselves; but, as I have said, this makes the inhibited act a crime against the United States, which assumes that the United States has jurisdiction of this question. I should like a little more light upon our authority to take that step before voting for the amendment.

Mr. POMERENE. Mr. President, will the Senator permit me to interrupt him?

Mr. BRANDEGEE. Certainly.

Mr. POMERENE. I came to the conclusion several days ago, after reading the bill, that I would offer this amendment, because I felt that it was necessary in order to perfect the bill. Now, I want to submit this question—a purely hypothetical question—to the Senator for his consideration.

Let us assume, for the sake of the argument, that we had every reason to believe that there was a conspiracy afoot in one of the sovereign States to overthrow that State government, and the matter is up for consideration before the Congress. The Constitution very clearly provides, under Article IV, section 4:

The United States shall guarantee to every State in this Union a republican form of government.

If it is to be overthrown, the government destroyed, and it may be an attempt made to set up a monarchical form of government or a purely soviet form of government or something of that sort, does not the Senator think that under this obligation to guarantee a republican form of government to the State it

would be incumbent upon the Congress to adopt means to prevent its overthrow? That might be in the form of furnishing an army or other forces, or it might be in the enactment of legislation which would attempt to penalize acts of this kind, just as the Senate is now attempting to penalize acts which are directed toward the Federal Government itself.

Mr. BRANDEGEE. Mr. President, there can be no question whatever as to the constitutionality of the measure so far as it penalizes an attempt to overthrow the Government of the United States by force. The question the Senator has asked me, if I may say so without giving offense, begs the question. He simply asks me again if I do not think the Congress has authority to do the very thing about which I am expressing a doubt, and does not give me the information for which I have asked—that is, to point where the Congress has the jurisdiction to adopt the amendment he proposes—beyond merely saying that the National Government guarantees to each State a Republican form of government. But, if I may proceed with his idea, if I grasp it, it is that whenever a disturbance occurs within the boundaries of a particular State, you can prosecute those who participate in it under this Federal penal statute for the crime of attempting to overthrow the Government. Now, the Constitution, when it guarantees a Republican form of government, does not guarantee the State against all attempts to overthrow its government except when the governor of the State or the legislature appeals to the United States for aid; and then it is military aid that is required, and not legislative aid.

I still am exceedingly doubtful as to whether we have any jurisdiction over the matter. Would the Senator claim that we had any jurisdiction—I assume not—over the case of an attempt to overthrow a city government?

Mr. POMERENE. Mr. President, I will be very frank with the Senator. I have not gone into that question. I recognize that it is a part of the State government; it is an agency created by the State; but I do not intend to go that far by the amendment which I have offered.

Mr. BRANDEGEE. I know the Senator did not, and he bases his justification of the attempt, so far as he has gone with it, upon the clause of the Constitution that guarantees to the State a republican form of government; but put yourself in the position of the Government district attorney who is trying a man who has been indicted for an attempt to overthrow by force a State government. In order to show, when the constitutionality of the act is questioned in the pleadings in court, that the United States had authority to pass this statute, they have got to prove that the insurrection contemplated depriving the State of a republican form of government. Now, until it is known what government is to be set up if they overthrow the existing one, how is the Department of Justice in any position to prove that the object sought in the disturbance was to deprive the State of a republican form of government? And unless they can prove that, of course the court has no jurisdiction.

Mr. POMERENE. Mr. President, will the Senator yield further?

The PRESIDING OFFICER. Does the Senator from Connecticut further yield to the Senator from Ohio?

Mr. BRANDEGEE. Certainly.

Mr. POMERENE. We, of course, agree—there is not any room for doubt about the fact—that it is the duty of the United States to guarantee this form of government. Now, may I ask the Senator, in what form shall this guaranty be exercised? What methods shall be employed? Of course, we can furnish our Army, but do we not have the same authority to furnish legislative guaranties as well as to furnish military guaranties in order to protect the form of government which we provide for in the Constitution?

Mr. BRANDEGEE. Why, I will answer the Senator that we certainly have, in my opinion. If the Senator's amendment were to punish any person who shall try by force to overthrow a republican form of government in any State, I would cheerfully vote for his amendment, and the constitutional provision which he cites would be my authority in maintaining its constitutionality; but the Senator must see that the question is, Have we jurisdiction under that constitutional guaranty to adopt this amendment?

Mr. WALSH of Montana. Mr. President—

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Montana?

Mr. BRANDEGEE. I yield to the Senator from Montana.

Mr. WALSH of Montana. The guaranty to which the Senator from Ohio refers goes further than the guaranty of a republican form of government, because the Government of the United States also undertakes to protect the several States against invasion, and, upon the demand of the executive thereof, even

against domestic violence; so it may be possible that we are under a kind of remote obligation to take care of State governments against a revolution undertaking to overthrow the State government by force or violence; but it is a very doubtful matter, and the propaganda against which this legislation is aimed is not a propaganda to overthrow the Government of some particular State or of all the States. It is to overthrow the Government of the United States, and until the evil is before us in some form or other why should we imperil this legislation by including a proposition that is, to say the least, doubtful?

Mr. President, the efforts that are being made would be futile if only the overthrow of the government of the State of Maine, for instance, were accomplished. It is not intended to take the States severally and overthrow the governments of the States one by one. The evil that confronts us is the threatened attempt to overthrow the Government of the entire United States. The States are all able themselves, by their own legislation, easily enough to take care of the circulation of such literature intended to overthrow the government of a particular State, and it seems to me we are going outside of the scope of this legislation to introduce an amendment of this character.

Mr. BRANDEGEE. I entirely agree with what the Senator has said, and I can not amplify it. It is right to the point. The testimony before the Judiciary Committee and the arguments there were against the using principally of the facilities furnished by the United States Government for the transmission of intelligence by these anarchists and people who were conducting a propaganda to overthrow the Government of the United States. It was to fix it so that they could not prostitute to the cause of a criminal conspiracy the avenues for which we tax the people, for their convenience, to transmit legitimate intelligence and information. It was the utilization of the avenues of interstate commerce by these "reds" and anarchists which we desired to prevent.

There is no doubt that each State can pass laws against attempts to overthrow it, and certainly can pass laws against the transmission of intelligence over such avenues as that State furnishes—its own interstate trolley lines and other means of communication. It was the helplessness of these local authorities to command the great facilities furnished by the United States as an interstate-commerce question, and their lack of ability to prevent them from being taken advantage of by these disseminators of inflammatory literature, that caused the demand for the framing and passage of this legislation.

As I said before, unless further and better advised than I feel at present, I would not vote for this amendment, although, of course, I realize that I would not want my vote to be misconstrued as being in favor of overthrowing State governments or municipal governments simply because I feel that it is doubtful whether we have jurisdiction to adopt this particular amendment.

The PRESIDING OFFICER. The question is upon the adoption of the amendment offered by the Senator from South Dakota.

The amendment was rejected.

Mr. McKELLAR. Mr. President, I offer the following amendment:

SEC. —. That every citizen of the United States who directly or indirectly commences or carries on any verbal, written, or printed intercourse or correspondence with any other person or persons, whether citizens or aliens, with the intent, either peaceably or by violence, to overthrow the Government of the United States, or to disintegrate or in any other manner set aside or do away with the Government of the United States, or to do away with all government; or who becomes a member of any organization, association, or society, foreign or domestic, having any such purpose; or who directly or indirectly, publicly or privately, associates himself or herself with any other person or persons having any such purpose; or who, having such intent or purpose, congregates, or who has or permits to be congregated, for him or her, any meeting of other persons the purpose of which is to secure the cooperation of such persons in an attempt, either peaceably or by violence, to overthrow, disintegrate, or in any manner do away with or set aside the Government of the United States, or all government generally, including that of the United States, shall be deemed and held as adhering to the enemies of the United States, giving them aid and comfort; and, upon conviction, shall be fined not less than \$5,000 for each offense and imprisonment not less than 1 nor more than 10 years, or may, in lieu of such fine and imprisonment, in the discretion of the judge, be deported permanently to the Island of Guam or to any island in the Philippine Archipelago belonging to the United States which may be set aside by the Government of the United States for the purpose of confining those who are convicted under the alternative punishment provisions of this act.

Mr. President, I indorse very heartily the bill which has been presented here by the committee and which is before the Senate. I introduced a similar bill some time before this one was introduced, having the same purpose, the principal difference being the use of the word "peaceably" in the bill.

We will not get very far, Mr. President, toward punishing anarchistic criminals in this country by using the word "for-

cibly" only in the bill and leaving out the word "peaceably." I do not know that I could make it plainer than by reading a few short excerpts from the testimony given before the Committee on Education and Labor some time ago, when the steel strike was on, by a personally very attractive young man by the name of Jacob Margolis. He is not a foreigner; he is an American citizen, born in Pittsburgh, as I recall. He takes the greatest pride in the fact that he does not believe in violence or force at all. This bill, if passed, would not reach a man like Margolis. It would not reach any sensible anarchist who is dangerous to this Republic. It will have no bearing on such a case as that. Men who believe in anarchy, men who congregate citizens of this country to talk anarchy to them, will not be affected by this bill as it is, because the bill limits its provisions to forcible overturning of the Government.

Mr. BORAH. Mr. President—

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Idaho?

Mr. McKELLAR. I yield to the Senator.

Mr. BORAH. Does the Senator take the position that you can make it a crime for the anarchistic advocates of this country to say to their followers and their friends, "Now, we believe in these doctrines, but there is only one way that you can effectuate them, and that is by going to the polls and electing your people to the legislature or to the Congress"?

Mr. McKELLAR. Mr. President, that is not the question here. They do not teach any such doctrines as the Senator from Idaho submits in his question. So that the Senator from Idaho may be made familiar with what they do teach, I am going to ask the Senator and other Senators to listen just a moment to the testimony of this man Margolis, who is one of the anarchists in chief in this country. He was being interrogated by one of the members of the committee, and the following occurred:

Senator McKELLAR. Don't you think that this is the best Government in the world for a man to be allowed to live under, for anybody to be allowed to live, where he or she to be—

Mr. MARGOLIS (interrupting). No, sir; I can not think that at all, Senator.

Senator McKELLAR. Don't you think that a man of your most considerable intelligence, do you think that you should be permitted to live under a Government that you despise in your heart?

Mr. MARGOLIS. I think that that is an unfair question, Senator, because it does not state the facts.

Senator McKELLAR. You have said—

Mr. MARGOLIS. I have said that I do not think there is any necessity for government when certain conditions prevailed.

Senator McKELLAR. And those conditions do not prevail in this country?

Mr. MARGOLIS. They do not prevail in this or any other country.

Senator McKELLAR. And, of course, if those conditions do not prevail, then you do not believe in this Government. You said that you only believed in a government when certain conditions prevailed, and they do not prevail in this Government?

Mr. MARGOLIS. I say this: That when certain conditions prevail there will be no necessity for government. However, with those conditions not prevailing, I say we must set about to remedy those conditions; and those conditions are based entirely upon industrial relations, and we must remedy those industrial relations, and when we have remedied those industrial relations we will not have any need for government.

Senator McKELLAR. I think that you testified before I came in that you were a lawyer?

Mr. MARGOLIS. Yes, sir.

Senator McKELLAR. And that you have been admitted to practice in the courts of Pennsylvania?

Mr. MARGOLIS. I am admitted to practice in the courts of Pennsylvania.

Senator McKELLAR. Did you take an oath?

Mr. MARGOLIS. I did.

Senator McKELLAR. To support and defend the Constitution of the United States?

Mr. MARGOLIS. I did.

Senator McKELLAR. And do you think that you are supporting and defending the Constitution of the United States when you advocate principles against this Government and all other government?

Mr. MARGOLIS. Senator, I have lived up to my oath to support and maintain the Constitution of the United States, I feel, as honestly and as consistently as any lawyer in Allegheny County whoever took the oath.

Senator McKELLAR. But that does not answer the question.

Mr. MARGOLIS. And, furthermore, I try to make myself clear—apparently I have not—that I do not advocate the overthrow of government. I do not advocate that, I say, but I do say that when certain conditions, based upon our industrial life, are modified, as a consequence of that modification and social arrangement will arise a condition which will obviate the necessity of government.

The CHAIRMAN. And that means a peaceful overthrow?

Here is the point to which I want to call special attention:

Mr. MARGOLIS. I do not advocate violence. I do not believe in violence under any circumstances.

Senator McKELLAR. And the basis of your principle is a peaceful overthrow?

Mr. MARGOLIS. A disappearance of the Government.

Senator McKELLAR. A disappearance of the Government. And if the result of your teachings and your preachings is a disappearance of the United States Government, how do you make that coincide with your oath as an attorney to defend the Constitution of the United States and the Government of the United States?

Mr. MARGOLIS. It is a very simple matter—

Senator McKELLAR. It is not a simple matter to me. I would like to have you explain it.

Mr. MARGOLIS. I am working along a line to bring about a new industrial arrangement. With a new industrial arrangement a new structure is created, and with the new structure created certain consequences flow from that change. The first one of those consequences is that the Government disappears. While the Government is in existence, while the Constitution is in effect, I will do nothing against that Constitution; I maintain and uphold it; but when the new social arrangements come into being, which makes a government obsolete, I leave it, so to speak, and it is not an attack upon the Government. It is a mere advocacy of a new structure which makes government unnecessary.

Senator McKELLAR. Is not that arguing around a circle, because what you did—you mean to get rid of this Government by peaceful means, to get rid of the very Government that you have sworn before God and man to uphold and to forever defend?

Mr. MARGOLIS. I can not see that there is any inconsistency in it.

The CHAIRMAN. And you have not sworn before God, have you?

Mr. MARGOLIS. No; I do not believe in God.

The CHAIRMAN. You are an atheist?

Mr. MARGOLIS. I am.

By the way, I will stop there long enough to show how insidious and how harmful this doctrine is. This man is a public lecturer, who goes around throughout the country stirring up by his seditious utterances interest and work against the Government of the United States, and he excuses himself under our constitutional provisions and under our laws by saying that he is not in favor of violence. He was asked by one of the Senators how he happened to have such a belief. He had said that he did not believe in honesty, that he did not believe in truth, that he did not believe in virtue, that he did not believe in government, that he did not believe in God, that he did not believe in the church, that he did not believe in anything that honest and patriotic men believe in in this country, and when he had finished the category—and here is the evidence before you if you will look at it—after he had finished summing up he said, "But I do not believe in violence." Why does not Mr. Margolis believe in violence? It is because the laws on our statute books are so arranged that by saying that he does not believe in violence he can escape the penalty of the law.

I examined him in part myself. I said, "This is very interesting, Mr. Margolis. You do not believe in violence. When you say you do not believe in truth, or virtue, or honesty, or government, or religion, or church, or God, how can it possibly be that you do not believe in violence?"

He said, "I just do not believe in it."

I said, "Suppose a man came into your house and assaulted you in the nighttime. Would you not defend yourself?"

He said, "No, sir."

I said, "Suppose he assaulted your wife in your presence?"

He said, "I would ask him to desist, but I would not use violence against him."

That is the kind of men we are going to let roam free over this country, under the terms of this bill. That is not the purpose of this bill. The purpose of this bill has been heralded over the country as a bill to control the "reds" and to fix their punishment. Let us control them. Let us fix their punishment. We have a legal right to do it. We ought to do it. We ought not to have any makeshift provision like this, and under my amendment it will be done effectually. The truth of the business is that after this bill unamended is passed, Mr. Margolis can go over this country making his speeches just as before. He does not have to change his convictions in the slightest. I have no doubt that he is falsifying about his conviction on violence. But he is making it accord with the laws of the United States, and we are apparently are willing to let him do it. That may be so, but I want to vote, and I want to put myself on record as voting, to deal with this kind of man, and not permit him to go around over the country preaching the harmful doctrines that he is preaching. He has a most engaging personality, is splendidly educated, an American citizen, one of the most harmful American citizens, in my humble judgment, in the confines of our country. We are legislating for that kind of people, and the legislation, if in the terms of this bill, would be absolutely harmless.

Mr. WALSH of Montana. Mr. President, may I inquire of the Senator from Tennessee, if Mr. Margolis does not believe in violence at all, did he indicate by what process he was going to accomplish the changes in government which he favors?

Mr. McKELLAR. He said he was for any kind of unrest; that things like strikes, like labor troubles, all stirred up the country and had a beneficial effect on his ultimate purposes. That was the substance of it. I am not giving his exact words.

Mr. WALSH of Montana. But no violence?

Mr. McKELLAR. No violence. But the effect of it was to lead to the inevitable conclusion that he advocated, to wit, that the time had come when we could set aside all government and substitute anarchy in its place.

I want to read you just a little further from the testimony of this very interesting witness, and I want to say that he is a very intelligent man with a very pleasant personality, one of the most harmful men that we could possibly have in our country.

Mr. SPENCER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Missouri?

Mr. McKELLAR. I yield.

Mr. SPENCER. Am I right in understanding the Senator's amendment as providing that if a man peaceably seeks to overthrow this Government he comes under the condemnation of the terms of the amendment?

Mr. McKELLAR. Under the terms of my amendment. I say that it is just as much of a crime against this Government to preach these doctrines of anarchy and sovietism and I. W. Wism, the overturning or destruction of the Government, as for him to take a gun and undertake by force, or what we call force, to overturn it.

It is more harmful, because it is more insidious; and what we should do at this time, when the whole country is stirred up about it, is to take vigorous action, and we should transport these men to a country where they can practice their own views in their own way; and a subsequent provision of the amendment which I have offered, and another one drawn by the Senator from Florida [Mr. FLETCHER], which I am going to offer in a few moments in his absence, he being ill, provides that men like Margolis can be sent to Guam, or to some island of the Philippines that we may purchase and set aside for that purpose, and let them practice there, with their fellow anarchists, the peculiar views that appeal to them most. We do not want that kind of men in this country, and I for one will never vote to allow them to stay here.

Mr. SPENCER. Will the Senator yield for another question?

Mr. McKELLAR. I yield to the Senator.

Mr. SPENCER. I quite understand the Senator's illustration. Hard cases make bad laws. Would it not be true if the Senator's amendment was adopted that whereas now our form of government, divided into its legislative, executive, and judicial functions, is well established, suppose men made up their minds that the form of government was a failure, and that the legislative branch of it ought to be eliminated, and a commission form of government ought to take its place, and they advocated it as strenuously as you like, would not that be the advocacy of an attempt to overthrow our Government?

Mr. McKELLAR. Quite the contrary. This is aimed at an attempt peaceably to overthrow all government, and especially the Government of the United States. The illustration of the Senator is not in accordance with the provisions of the amendment.

Mr. SPENCER. Did I not understand the Senator to say that the provisions of his amendment were directed against those who peaceably sought to overthrow this Government?

Mr. McKELLAR. That is true.

Mr. SPENCER. The very minute you attempt to radically change the form of government as we now have it, and do it by peaceable means, you are attempting to overthrow this Government; and is not that within the province of citizens at any time?

Mr. McKELLAR. Absolutely; and it will not be hurt in the least by the enactment into law of the amendment that I have suggested. The amendment that I have suggested is aimed at and will include only those men who have it in their hearts to be opposed to all government and to the Government of the United States. It does not apply at all to those who would change our form of government. The wording can not apply to them, but to the men who do not believe in government and who want to disintegrate and to do away with all government. The words are almost precisely the same as they are in the original bill, with the exception that the word "peaceably" is put in there, and that is the only way you are going to get the anarchists of this country. You can not get them when they are declaring in every breath that they are opposed to violence; that they want peaceably to set aside this Government. I say that in a sense is violence.

Mr. KENYON. Mr. President—

Mr. McKELLAR. I yield to the Senator from Iowa.

Mr. KENYON. I notice that the Senator provides for deportation to the island of Guam. I should like to inquire of the Senator about what is the population of Guam?

Mr. McKELLAR. I do not know, but I have put the amendment in the alternative. I was led to suggest the amendment by the Senator from Florida [Mr. FLETCHER], who had made some investigation, and who is not here now. I put it in the

alternative, "or to some island purchased by the United States," for this particular purpose.

Mr. KENYON. I was wondering what the Senator had against the people of Guam.

Mr. McKELLAR. I have nothing against the people of Guam, but I have more interest in the people of the United States than I have in the people of Guam. If we move the people of Guam out, we will give them a better home somewhere else.

Mr. THOMAS. Does not the Senator think he would need a continent instead of an island before he went very far?

Mr. McKELLAR. No, sir; quite the contrary. If I had so little belief in the patriotism of America as to think we needed a continent to send the anarchists of this country to, I would not be much of an American citizen. I deny that we have any such condition in the country. We have a few red-handed anarchists in this country who under our laws are allowed to go as they will, scot free, preaching their infamous doctrines, and they imagine that they amount to a great many; but whenever we pass a law that will effectively deal with the few loud-mouthed, flannel-mouthed anarchists that we have we will have none at all, and no continent will be filled with them, and even a small island like the island of Guam will be sparsely settled with them, because they will come to be very good American citizens as soon as they find that they are going to jail or to Guam if Congress does the right thing. Looking a jail or deportation in the face will cause them to modify or change their foolish views wonderfully.

Mr. KENYON. Mr. President—

Mr. McKELLAR. I yield.

Mr. KENYON. I understand we are to have the island of Yap under the German treaty. Why not send them there?

Mr. McKELLAR. I will accept that as an amendment if it is put in the alternative.

Mr. KENYON. I should like to ask the Senator another question. I am not a convert to his proposition as yet. How can we deport a man who is a natural-born citizen of the United States?

Mr. McKELLAR. If we can take a citizen of the United States and put him in jail here, we can put him in jail anywhere in the territory of the United States. I think, unquestionably, the Senator would agree to that legal proposition. In other words, if we have the right to confine a man who violates the Federal law in the State of Georgia or in the State of Iowa or in the Hawaiian Islands, as we are doing every day, we have the right to send those men who violate the law to any part of our territory. The Philippine Islands are a part of American territory, and those men can be confined there as well as anywhere else.

Mr. KENYON. The Senator's theory is that we are to send them to another part of our territory?

Mr. McKELLAR. My theory is that we have a right to imprison violators of the law anywhere we please on American territory, whether they are citizens or not.

Mr. KENYON. I am inclined to agree with the Senator on that.

Mr. NUGENT. Mr. President—

Mr. McKELLAR. I yield to the Senator from Idaho.

Mr. NUGENT. Do I understand the Senator to contend that the people of this country, by peaceable means, can not endeavor to bring about or bring about as a matter of fact the establishment of a different form of government?

Mr. McKELLAR. Oh, no. The Senator certainly did not hear my amendment read or has not heard my argument or he would not ask that question. There is not a thing in the world in that suggestion. It is their belief in no government, it is their determination to bring about the disintegration or the abolition of all government, and especially the Government of the United States.

I want to read this very remarkable anarchist's testimony a little further. At the expense of repeating just a trifle, I read again:

Senator McKELLAR. As I understand you, you do not believe in God?

Mr. MARGOLIS. I do not.

Senator McKELLAR. You do not believe in any churches?

Mr. MARGOLIS. I do not.

Senator McKELLAR. You do not believe in any government?

Mr. MARGOLIS. I do not.

Senator McKELLAR. And you do not believe in anything?

Mr. MARGOLIS. I believe in man.

Senator McKELLAR. You believe in man?

Mr. MARGOLIS. I believe in man.

Senator McKELLAR. And that man is yourself?

Mr. MARGOLIS. Oh, no; in all people.

Senator McKELLAR. You know that the great majority of men do not believe as you do?

Mr. MARGOLIS. That may be all very true.

Senator McKELLAR. Why do you regard it that you are the only one that is correct?

Mr. MARGOLIS. I did not say that.

Senator McKELLAR. There are a few others that believe like you?

Mr. MARGOLIS. Oh, no; I do not mean that at all. I do not take an arrogant position and say that I know it all.

Senator McKELLAR. But you say that you do not believe in God; that you do not believe in religion; that you do not believe in churches; you do not believe in society—

Mr. MARGOLIS (interposing). I do believe in society.

Senator McKELLAR. You do not believe in government?

Mr. MARGOLIS. That is wrong. I do believe in society.

Senator McKELLAR. You do not believe in government?

Mr. MARGOLIS. I do not believe in the necessity of government.

Senator McKELLAR. You do not believe very much for the people to believe in.

Mr. MARGOLIS. I believe in humanity as something which can do a whole lot of things without any interference or supervision, if let alone.

Senator McKELLAR. I do not like to ask a personal question, but have you accumulated any property?

Mr. MARGOLIS. I have not.

Senator McKELLAR. None at all?

Mr. MARGOLIS. No property. I have saved a little money, because I live quite abstemiously and have saved a little money.

Senator McKELLAR. Would you mind saying to what extent?

Mr. MARGOLIS. A few thousand dollars.

Senator PHIPPS. I think it would be rather more enlightening for the committee to know in what form you have saved that money. Did you put it in stock or did you buy Government securities?

Mr. MARGOLIS. I have bought a few shares of bank stock, if the committee wants to know; I really think that is rather privileged.

Senator McKELLAR. It is only in connection with your views.

Mr. MARGOLIS. I think I made a general statement here that I have made a compromise with every human being who realizes that we are dealing with realities; that I have made a compromise, and I take things as they are, and do not take any bitter attitude of things and do not become sour on anything, and as a consequence I take things as they are and am hopeful that we will bring about better conditions in the future. My earnings have been largely put in life insurance, because I have a wife and two children.

That is the wife he declined to defend and said he would not defend if she were attacked.

Senator PHIPPS. That is property.

Mr. MARGOLIS. I call that the saving of money.

Senator McKELLAR. If you do not believe in property, and if you do not believe in properties, anything, why is it that you are willing to buy insurance to lay up property for your wife and children?

Mr. MARGOLIS. Because my wife and children, under this system, if anything should happen, would have something to live on.

Senator McKELLAR. Is not that so with every man and every man's wife and children, and is not that his first duty—to acquire something for the helpless wife and children in untoward years?

Mr. MARGOLIS. I carry out that first duty very scrupulously, but I believe that we can develop a system or system of society where it will not be necessary to do that, but while we have our present society I am going to do everything I can in order to protect my children and my wife if anything should happen to me.

And so on. I read further:

Senator McKELLAR. The other day, in examining Mr. Foster on his little red book, which you probably have seen, on "Syndicalism," the question of whether he believed in truth arose. Do you believe in truth?

Mr. MARGOLIS. If you mean by truth as Spencer defines it, I would say "yes."

Senator McKELLAR. Take "truth" as Webster defines it. Do you believe in that kind of truth?

Mr. MARGOLIS. If you will permit me, Senator, I would like to explain.

Senator McKELLAR. Surely.

Mr. MARGOLIS. Truth is an abstract word. It is an abstraction. If you mean absolute truth, we know nothing about it. We talk about relative truth. Spencer, for instance, defines truth to be the inability to conceive of the negative of a proposition. Whenever I can not conceive of the negative of a proposition, then I call it "truth," but whenever you say to me, "Do I believe in truth?" I can not say "yes," because I do not know what truth you are referring to.

Senator McKELLAR. Do you believe in truth as described in common parlance or in the dictionary by Webster?

Mr. MARGOLIS. I believe in being truthful.

Senator McKELLAR. But you do not believe in truth?

Mr. MARGOLIS. Not as an abstract thing.

Senator McKELLAR. Do you believe in honor?

Mr. MARGOLIS. There is another abstraction.

And so it is all along. He says that he does not believe in any of these things like government, law, religion, honor, virtue, everything that the human heart holds dear in a free country. This man is roaming over our country perhaps at this very hour preaching these insidious doctrines to the ignorant and the gullible people of the country, inoculating them with these anarchistic views. I say we ought to put a stop to it. The only way we can do it is to strike out the words "forcibly or by violence" or agree to my amendment, which, in my judgment, will have the same effect.

I ask for a vote on my amendment, and I should like to have the yeas and nays.

Mr. STERLING. Mr. President, of course, having urged again and again that the special merit of the pending bill is that it seeks to prevent the overthrow of all government by force or violence, I could not consent to the amendment offered by the Senator from Tennessee [Mr. McKELLAR]. It would be strange if we should add it as a distinct and separate section of the bill. The amendment with the inclusion of the word "peaceable" covers the subject matter of the bill.

Mr. McKELLAR. It does not, because I do not think the bill covers membership in an anarchistic society.

Mr. STERLING. No.

Mr. McKELLAR. My own view is if a man or woman belongs to a society of anarchists in this country, preaching the doctrine of the abolition of all government, the very fact of membership in that sort of a society ought to be such a crime as to lead the real Americans of the country to put him on an island where he would not do any harm.

Mr. BORAH. Mr. President—

Mr. STERLING. I yield to the Senator from Idaho.

Mr. BORAH. The Senator from Tennessee is in advance of his day. No doubt at the rate we are traveling we will arrive in a short time at the point to which he refers.

Mr. McKELLAR. Mr. President, if the Senator from South Dakota will permit me, in answer to that I want to say that I have admired for a long time the doctrine of Americanism as preached by the Senator from Idaho. We talk very much about Americanism in this age. The best act of Americanism that I know anything about is the deportation of the few in our own country who despise the American Government and are constantly preaching against it. I hope the Senator from Idaho will change his mind and join with me in attempting to obtain in this country a pure Americanism, undefiled by the vicious monsters who are going around, peaceably as they say, trying to uproot the Government of the United States.

Mr. BORAH. From my viewpoint I could deport every unconditional ratifier of the treaty under the amendment which the Senator is offering, for I hold such proceedings would finally change and probably destroy our present form of government.

Mr. McKELLAR. The Senator would not have majority enough for that. I think there are only 15 or 20 "bitter enders."

Mr. STERLING. To advise the peaceable overthrow of the Government of the United States is little more than to advise the overthrow or change in the form of government by means of the ballot; but, so far as that is concerned, we shall have to trust to the good sense and the patriotism of the American people.

As to the other provisions of the amendment of the Senator, in regard to organizations which may favor the overthrow of the Government by force or violence, that question has not escaped the consideration of the Judiciary Committee; and there is now pending before that committee a bill—a very well considered bill, too—aimed at such associations.

Mr. McKELLAR. Will the Senator yield to me?

Mr. STERLING. I yield.

Mr. McKELLAR. If there is a bill now before the Senate, and it has been well considered, and, as the Senator has pointed out, it has been well considered by the committee, I do not see any reason why we should take two bites at the cherry. I think the passage of this bill in the form in which it now is will give great courage to the anarchist class.

Mr. STERLING. I think the Senator from Tennessee misunderstood me. The bill to which I refer is before the Judiciary Committee and not before the Senate at this time. Mr. President, I hope the amendment will not prevail.

Mr. KENYON. I should like to ask the Senator from South Dakota if he expects the bill to which he has referred to be reported out within any reasonable time?

Mr. STERLING. I will say to the Senator from Iowa that I think the bill will be reported out before a great while.

Mr. President, while I am on the floor, and before the vote is taken on the bill, I wish to submit for the RECORD the following: First, an excerpt from the address of Thomas Erskine in the trial of Thomas Paine defining the meaning of a free press; second, the charge to the jury by Chief Justice Coleridge, then Justice Coleridge, in 1910, in the case of Rex against Aldred; and, third, the Canadian law relative to sedition, and the Canadian law to prohibit the use of the mails for the purpose of sending seditious matter through them.

In the absence of objection, the matter referred to was ordered to be printed in the RECORD, as follows:

[Extract from address of Thomas Erskine in the trial of Thomas Paine.]

The proposition which I mean to maintain as the basis of the liberty of the press, and without which it is an empty sound, is this: That every man, not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general or upon that of our own particular country; that he may analyze the principles of its constitution, point out its errors and defects, examine and publish its corruptions, warn his fellow citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective or sliding from their object by abuse. All this every subject of the country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the convictions which flow from reasonings dictated by conscience.

If, indeed, he writes what he does not think—if, contemplating the misery of others, he wickedly condemns what his own understanding approves—or even admitting his real disgust against the Government

or its corruptions, if he calumniates living magistrates, or holds out to individuals that they have a right to run before the public mind in their conduct—that they may oppose by contumacy or force what private reason only disapproves, that they may disobey the law because their judgment condemns it, or resist the public will, because they honestly wish to change it—he is then a criminal upon every principle of English justice, because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of misconduct in a part of the community, instead of endeavoring to change, by the impulse of reason, that universal assent which, in this and every country, constitutes the law for all. (Howells State Trials, Vol. XXII, p. 414.)

[Extract from charge to jury by Justice Coleridge in the case of Rex v. Aldred.]

A man may lawfully express his opinion on any public matter, however distasteful, however repugnant to others. If, of course, he avoids defamatory matter, or if he avoids anything that can be characterized either as a blasphemous or as an obscene libel. Matters of state, matters of policy, matters even of morals—all these are open to him. He may state his opinion freely, he may buttress it by argument, he may try to persuade others to share his views. Courts and juries are not the judges in such matters. For instance, if he thinks that either a despotism, or an oligarchy, or a republic, or even no government at all is the best way of conducting human affairs, he is at perfect liberty to say so. He may assail politicians, he may attack governments, he may warn the executive of the day against taking a particular course, or he may remonstrate with the executive of the day for not taking a particular course; he may seek to show that rebellions, insurrections, outrages, assassinations, and such like, are the natural, the deplorable, the inevitable outcome of the policy which he is combating. All that is allowed, because all that is innocuous; but, on the other hand, if he makes use of language calculated to advocate or to incite others to public disorders, to wit, rebellions, insurrections, assassinations, outrages, or any physical force or violence of any kind, then, whatever his motives, whatever his intentions, there would be evidence on which a jury might, on which I should think a jury ought, and on which a jury would decide that he was guilty of a seditious publication.

[Extract from Canadian sedition law.]

(1) Any person who prints, publishes, edits, issues, circulates, sells, or offers for sale or distribution any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication, or document of any kind, in which is taught, advocated, advised, or defended, or who shall in any manner teach, advocate, or advise or defend the use, without authority of law, of force, violence, terrorism, or physical injury to person or property, or threats of such injury, as a means of accomplishing any governmental, industrial, or economic change, or otherwise, shall be guilty of an offense and liable to imprisonment for not more than 20 years.

(2) Any person who circulates or attempts to circulate or distribute any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication, or document of any kind, as described in this section by mailing the same or causing the same to be mailed or posted in any post office, letter box, or other mail receptacle in Canada, shall be guilty of an offense, and shall be liable to imprisonment for not more than 20 years.

(3) Any person who imports into Canada from any other country, or attempts to import by or through any means whatsoever, any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication, or document of any kind as described in this section, shall be guilty of an offense and shall be liable to imprisonment for not more than 20 years.

(4) It shall be the duty of every person in the employment of His Majesty in respect of His Government of Canada, either in the post office department or in any other department, to seize and take possession of any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication, or document, as mentioned in the last preceding section, upon discovery of the same in the post office mails of Canada or in or upon any station, wharf, yard, car, truck, motor, or other vehicle, steamboat, or other vessel upon which the same may be found and when so seized and taken, without delay to transmit the same, together with the envelopes, coverings, and wrappings attached thereto, to the chief commissioner of Dominion police, or to the commissioner of the Royal Northwest Mounted Police.

Mr. WALSH of Montana. Mr. President, I am very sure that, however reprehensible may be the inculcation of the doctrine preached by Mr. Margolis, there is no power in the Congress of the United States to prevent either the utterance or the circulation of sentiments of that character. I think they serve well to define the limits of the liberty of speech and of the press. In my opinion the amendment tendered by the Senator from Tennessee [Mr. McKELLAR] is clearly in violation of the first amendment to the Constitution, not only in that respect but also in the respect that it interferes with the right of assemblage, also guaranteed by that constitutional amendment.

I do not share in the apprehensions of the Senator from Idaho [Mr. BORAH] that we are approaching or that we ever shall approach or arrive at the state of public mind when repressive legislation of that character shall be enacted; but if we ever do arrive at it the Supreme Court of the United States will very promptly, in my judgment, dispose of it. However, I take this occasion to say that I have not observed, either through the public press or through any expressions in the Halls of Congress or through any legislation that has been enacted by Congress or which has received its favorable consideration, any weakening of the attachment of the people of the United States to the right of free speech and of the freedom of the press. I have not discovered that there is any fear whatever of any real encroachment upon that fundamental right of our people nor any growth or tendency in that direction.

As to the effort to prohibit the change in our form of government or to overthrow our present form of government and substitute for it some other form of government by peaceful means—which, of course, means by lawful means—I am perfectly sure, upon reflection, the Senator from Tennessee will recognize it is not only impossible to prevent the inculcation of sentiments of that character, but that it would be unwise to attempt to do so in any way, for if there is anything that we prize among all the liberties that we enjoy it is the right to advocate and to urge the change in our form of government.

Mr. McKELLAR. Will the Senator yield?

Mr. WALSH of Montana. In just a moment. Mr. President, the Declaration of Independence spoke of that as a fundamental right. I yield to the Senator from Tennessee.

Mr. McKELLAR. The Senator from Montana, I think, misunderstands or misjudges the amendment which I have offered. The Senator says it would never do to put on our statute books a provision that we could not peaceably change our form of government. This amendment has nothing to do with that. The proposition in my amendment is that if a man peaceably or forcibly undertakes to overthrow the Government, the crime is the overthrow of the Government; and whether he does it peaceably or whether he does it by force is immaterial when he is engaged in the commission of a crime. For instance, it is analogous in a way, though not exactly, to the crime of murder. You can forcibly stick a knife into a man's body and kill him, or you can take a pistol or a gun and forcibly kill him with that; but you might also so arrange that he might kill himself by permitting him to pour poison into his own coffee and kill him, and that would be just as much a crime under our law. I desire to apply that same principle to treason and sedition in this country. I say it is just as much a crime to overthrow the Government peaceably as it is by force.

Mr. WALSH of Montana. Mr. President, I do not misunderstand the Senator. I followed him very carefully; and I still have the same conclusion concerning the amendment which he has offered that I had before his explanation. I dare say that you might kill a man by telling the truth about him; you might tell such unpleasant things about him that he would go into a decline. We have heard of people who have died from joy and who have died from grief.

Mr. McKELLAR. Will the Senator yield to me again?

Mr. WALSH of Montana. Yes.

Mr. McKELLAR. Would the Senator say that if I left a poison on the Senator's table, leading him to believe that it was a medicine and would be helpful to him, and the Senator took it and died as the result, that that would be a forcible killing, or would that be a perfectly peaceable killing? Would it not be a crime just the same; and yet would there be the slightest force about it?

Mr. WALSH of Montana. Such a killing would be very properly described in an indictment as having been accomplished by force and arms.

Mr. McKELLAR. It might be; but it would be a misnomer and a misuse of terms.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from Tennessee, on which the yeas and nays have been demanded.

The yeas and nays were not ordered.

The amendment was rejected.

Mr. McKELLAR. Mr. President, I have two other amendments I desire to offer, one on behalf of the Senator from Florida [Mr. FLETCHER], who is detained from the Senate on account of illness. They are companion pieces to the amendment which has just been voted upon, and as it is apparent from the vote just taken that the Senate is opposed to the amendments, I shall not detain the Senate by discussing them; but I should like to offer them, so that the RECORD may be complete. First, on behalf of the Senator from Florida [Mr. FLETCHER], I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The amendment was to add, at the end of the bill, the following:

SEC. 6. That upon the decree of deportation being entered the person shall be delivered to the United States marshal, together with the transcript of judgment and decree to be furnished by the clerk of the court under seal of the court. The marshal shall then forthwith transport said convicted defendant or defendants to the island of Guam by the most direct and convenient route and deliver him or them to the official representing the United States on said island, and shall also deliver the certified copy of decree to such official in control of said island, who shall enter same upon his records, and said official shall then have jurisdiction of any future proceedings necessary in each case. And the said official shall, upon receiving any such person or persons, make a record of such transaction and shall proceed to such measures in the way of registration, thumb prints, Bertillon measurements, or such other means as he may deem necessary to permanently identify such person as a deported person. The said person or persons

shall then be confined in such place or places as the official in charge of the island shall direct.

SEC. 7. That at any time after 30 days from said order of confinement any person so deported shall have the privilege of filing a petition addressed to the said authority in the island of Guam for permission to be allowed the liberty of the island, and said official shall, in his discretion, issue a parole to said petitioner allowing him the liberty of the island upon such terms and conditions as said official shall determine, but under no such case shall said petitioner be allowed to leave the island.

SEC. 8. That any person or persons who shall aid or assist any deported person or persons to leave said island, or any boat or vessel that shall take any such person as a passenger or otherwise, without the order of the authorities in control of the said island for the United States, shall be guilty of felony, and upon conviction thereof shall be fined not more than \$5,000 or be imprisoned not more than five years, or both, in the discretion of the said authorities.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was rejected.

Mr. McKELLAR. I now offer the other amendment referred to by me.

The VICE PRESIDENT. The amendment will be stated.

The amendment was to add as a new section at the end of the bill the following:

That every person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally of the Government of the United States, or any other organized government, because of his or their official character, shall be deemed guilty of a felony and shall be punished by a fine of \$5,000 and imprisonment of not less than five years for each separate offense, or in lieu of such punishment may be, by order of the court, confined to the island of Guam as hereinafter provided.

That any person who unlawfully aids or assists in the commission of any such offense as hereinabove described, or connives or conspires with any person or persons to allow, procure, or permit the commission of any such offense shall, upon conviction, be guilty of a felony and shall be punished as hereinbefore prescribed for the principal offense.

The VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Tennessee.

The amendment was rejected.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The VICE PRESIDENT. The question is, Shall the bill pass?

Mr. BORAH. Mr. President, I do not intend to call for a yeas-and-nays vote on the bill, as there is not a quorum present, but I desire a viva voce vote upon it.

The question being put, the bill was passed.

WATER-POWER DEVELOPMENT.

Mr. NELSON. I move that the consideration of the unfinished business be resumed.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 3184) to create a Federal power commission and to define its powers and duties, to provide for the improvement of navigation, for the development of water power, for the use of lands of the United States in relation thereto, to repeal section 18 of "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved August 8, 1917, and for other purposes.

Mr. NELSON. I move that the Senate adjourn.

The motion was agreed to; and (at 4 o'clock and 25 minutes p. m.) the Senate adjourned until Monday, January 12, 1920, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

SATURDAY, January 10, 1920.

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Our Father in heaven, we bless Thee for the splendid opportunities afforded in life, for the development of all that is best in us, in the struggle for existence, the overcoming of evil, the unraveling of the mysteries which environ us; to think, to will, to do, to achieve, and keep ourselves unspotted from the world; and thus develop to symmetrical proportions all the faculties of mind and soul, which Thou hast bestowed upon us, to perfection—the goal of life—until we all come unto the measure of the stature of the fullness of Christ—the acme of manhood, the paragon of perfection; and all praise shall be Thine, our Father. Amen.

The Journal of the proceedings of yesterday was read and approved.